The American
Political Science Review

Vol. XXV NOVEMBER, 1931 No. 4

PARLIAMENTARY CONTROL OF FOREIGN POLICY IN GREAT BRITAIN

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Parliament has today perhaps less supervision over foreign policy than over any other field of governmental activity. Such has been the case for over a generation, and such is still the case in spite of the Labor party's efforts to democratize the control of foreign affairs. That such a situation should exist is particularly strange, since the generally accepted theory of the English constitution assumes that foreign affairs are under the strict control of Parliament. Indeed, the governmental practice of the last forty years has largely violated theories formulated somewhat earlier. How this situation originated, and what its significance is, can best be understood after some examination of the theory and practice of foreign policy control.

What may be called the classical theories of the English constitution are largely the product of the writings of Bagehot and J. S. Mill working on the imagination of the generation which Gladstone dominated, and given emphasis by the Liberals of the seventies. Somewhat unthinkingly, perhaps, these theories won acceptance by Liberals and Conservatives alike. Authoritative statements of the constitutional theory of the control of foreign policy will be found, for instance, in Anson's *Law and Custom of the Constitution* and Halsbury's *Laws of*

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England. Both of these works express a Liberal conception of foreign policy control; yet both are the works of Tories.[1]

According to the classical theory of the constitution, Parliament exercises a broad supervision over foreign affairs through the House of Commons' general control over all servants of the crown, and in addition may check ministers in certain other specific ways, through questions, requests that "papers be laid before the House" in regard to a specific matter known to be under consideration, the debate on the Foreign Office vote in the budget, and motions for the adjournment of the House. The very important matter of treaties, however, is an exception to the rule, for over treaties, since they are legally within the prerogative of the crown, Parliament has little power. Treaties may be negotiated, signed, and even ratified in secret without the knowledge of Parliament; only those dealing with certain particular subjects are held to need specific parliamentary approval.[2]

The English constitution settled into its modern form after Palmerston died in 1865, releasing at last his forty-year grip on the administration of England, and particularly his generation-long hold on foreign affairs.[3] In foreign policy control, however, the Palmerstonian system was the foundation of

[1] Anson published his first volume (*Parliament*) in 1886 and the second volume (*The Crown*) in 1892. The *Laws of England* was published in 1909.

[2] Such are treaties in which taxation is imposed, grants from public funds made necessary, existing trade and navigation laws affected, or private rights of subjects interfered with in times of peace. But even in these cases the sanction of Parliament is necessary only for the purpose of making the treaty binding on subjects of the crown and enforceable by its officers. Treaties ceding important territory may well have the consent of Parliament. The discussion in Halsbury, *Laws of England,* VI, 427-454, is an authoritative statement of the classical theory. Supplement No. 16 (1926), p. 418, gives some information on the handling of post-war treaties. Anson, *Law and Custom of the Constitution* (3rd ed., London, 1908), Vol. II, Pt. II, Ch. 6, gives a brief summary of the classical theory. An interesting and weighty attack on the classical theory as it applies to treaties was made by Judge Athelney-Jones before the Grotius Society on July 16, 1918. See Judge [Llewellyn Archer] Athelney-Jones, "The Treaty-Making Powers of the Crown," *Grotius Society Proceedings* (London, 1919), IV, 95ff.

[3] He was foreign secretary in 1830-34, 1835-41, and 1846-51, and prime minister in 1855-58 and 1859-65.

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what has followed. Palmerston himself gave the best description of the theories on which he acted, in his remarks to Cobden in 1859 when he had offered and Cobden was refusing a seat in the cabinet. Palmerston pointed out, according to Cobden's memorandum, "that as questions of foreign policy were now uppermost, and as those questions were in the hands of the executive, it was only by joining the government that I could influence them. 'You and your friends complain,' he said, 'of a secret diplomacy, and that wars are entered into without consulting the people. Now it is in the cabinet alone that questions of foreign policy are settled. We never consult Parliament till after they are settled. If, therefore, you wish to have a voice in those questions, you can only do so in the cabinet.' "[4]

This was the accepted doctrine of the time. It was susceptible to slight modification in two directions. First, a strong-willed foreign secretary (as Palmerston was) could have things largely his own way, either by coercing the cabinet or by acting without consulting it or even its head, the prime minister. Palmerston's "notion was that a foreign minister ought to be strictly bound to pursue the policy of the cabinet he belonged to, but that he ought to be left free to follow out that policy in the ordinary details of his office, without having every dispatch he wrote submitted to criticism and comment."[5] In fact, he did pretty much as he liked, notwithstanding the frequent opposition of the Queen, the Prince Consort, and Lord John Russell, and it is only modern commentators who have therefore called him "arbitrary and unconstitutional."[6] This individual control of foreign policy was strengthened by the fact that he kept details of administration as far as possible in his own hands. "He exercised an absolute despotism at the Foreign Office . . . without the slightest control, and scarcely

[4] John Morley, *Life of Richard Cobden* (London, 1881), II, 231.

[5] Evelyn Ashley, *Life of . . . Viscount Palmerston: 1846-1885* (2nd ed., London, 1876), I, 281.

[6] See *Cambridge History of British Foreign Policy* (New York, 1923), II, 325-340. The words quoted are at p. 327.

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any interference, on the part of his colleagues.'"[7] On the other hand, even under Palmerston there was already a feeling that the House of Commons was entitled to some supervision over foreign affairs, hard as it might be to supervise them effectively. At times, though only at times, Palmerston had to submit his policies to the will of the House.[8] But as Sir Stafford Northcote wrote to Disraeli in 1864: "It belongs to Parliament, no doubt, to lay down the broad, general outlines of the foreign policy of the country. It belongs also to Parliament to criticize the action of the ministry when fully informed of it. But the difficulty of criticizing, while our information is imperfect, and the uselessness of criticizing after the event, detract seriously from the value of the parliamentary check, in nine case [sic] out of ten which arise."[9] It is significant that the only trace of interest we find in Palmerston as to what the public thought of his policies is seen in his close and confidential relations with the *Morning Chronicle*.[10]

Such was the old system of control of foreign policy—autocracy limited occasionally by the effective intervention of monarch, prime minister, or Parliament. The death of Palmerston

[7] Greville's *Journal*, Pt. II, Vol. I, p. 298, as quoted in *Dictionary of National Biography* under Palmerston. His subordinates liked him because he stood up for them, never shrinking from questions in the House of Commons. See Sir Horace Rumbold, *Recollections of a Diplomatist* (London, 1902), I, 111. On the supervision of despatches in this period, see Hannis Taylor, *Origin and Growth of the English Constitution* (Boston, 1898), II, 551 n.

[8] His policy was attacked by Roebuck in 1850. Papers were laid before the House. Cf. Edward Hertslet, *Old Foreign Office* (London, 1901), 72-73. There was a full-dress debate for four days. See Ashley, I, 211-227, and John Morley, *Life of William Ewart Gladstone* (London, 1903), II, 366-371. In such other cases as the Orsini affair (1858) and the Schleswig-Holstein affair (1863-64), Palmerston's policy underwent close scrutiny.

[9] Andrew Lang, *Life of Sir Stafford Northcote, First Earl of Iddesleigh* (Edinburgh, 1890), I, 214-215.

[10] Its editor, John Easthope, given a baronetcy in 1841, attended daily at the Foreign Office and received and printed articles written by Palmerston himself. Sir Herbert Maxwell, *Life and Letters of . . . Fourth Earl of Clarendon* (London, 1913), I, 213. For relations of Clarendon, Aberdeen, and others with the press, see Maxwell, I, 281; Algernon Cecil, "The Foreign Office," in Vol. III of the *Cambridge History of British Foreign Policy;* Sir Edward Cook, *Delane of the Times* (London, 1915), passim.

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permitted a change, for both Disraeli and Gladstone based their political activities on a respect for the House of Commons and a desire to conciliate the electorate.

At the risk of over-simplifying a complex matter, the development from Palmerstonian autocracy to Gladstonian submission to popular judgment may be said to fall into three stages. The first was one in which Disraeli's government conducted foreign affairs quietly in the old-fashioned way. Up to the time when the Eastern question became acute in 1876, it would seem that Disraeli's cabinets seldom debated foreign policies.[11] It is to this question that England owes both a public interest and a parliamentary sharing in the control of foreign policy. With 1876 began a new stage of development, in which foreign affairs were constantly debated in the cabinet, and, because the cabinet was often divided, were brought from the cabinet into the arena of the House of Commons. From the confusion of the time[12] it emerges clearly that now and again the House of Commons had to be consulted, that the largely pro-Turkish policy of Disraeli (unpopular in both cabinet and country) was followed because Disraeli could sway the House,[13] and that England's part in the Congress of Berlin, which for the time closed the Eastern question, was approved by the House.[14]

It was Gladstone who carried the development one step further, and made foreign affairs a matter of popular debate. Out of office, and faced by a Parliament both houses of which supported Disraeli's policies, the Liberal leader carried the Eastern question to the country. There he fought it with pam-

[11] At the time of the question of the Suez Canal shares in 1875, Sir Stafford Northcote remarked to the Prime Minister: "I know so little of the actual conduct of our foreign relations." Lang, II, 85. Again, in 1878, Sir Stafford, then leader of the Commons, was kept in intentional ignorance of a development in foreign relations. *Ibid.*, 109-110.

[12] It can best be studied in Lady Gwendolen Cecil, *Life of Robert Marquis of Salisbury* (London, 1921), Vol. II.

[13] See Gwendolen Cecil, II, 138-139, and the remarks of James Bryce on March 19, 1886. 303 *Hansard's Debates*, 3s., 1420-21.

[14] By a majority of 143. The Lords approved without a division. W. F. Monypenny and G. E. Buckle, *Life of Benjamin Disraeli, Earl of Beaconsfield* (London, 1910-20), VI, 358.

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phlets,[15] and more especially he made it the subject of his Midlothian campaign of 1880, the first great political campaign ever waged in England on an issue of foreign policy. In 1880, there was no foreign policy agreed on by both parties: Liberals and Conservatives differed, and the voter decided between them. Gladstone won; the enormous Liberal majority in the Parliament of 1880 was a popular condemnation of Disraeli's Eastern policy.[16] The result of this struggle was not to make foreign policy a constant matter of public debate, but to crystallize the idea that knowledge and responsibility should no longer be concentrated in the hands of one man (as with Palmerston) or of the cabinet (as with Derby and Disraeli), but should be shared effectively by the House of Commons—in short, that foreign policy was a House of Commons matter.

It is significant of the change that the House of Commons even went so far, in 1886, as to attempt to decide just what Parliament's authority over foreign affairs was and how it was to be exercised. Mr. Henry Richard, M.P. for Methyr, opened the first of a long series of debates on this subject by his resolution: "That in the opinion of this House, it is not just or expedient to embark in war, contract engagements involving grave responsibilities for the nation, and add territories to the Empire without the knowledge and consent of Parliament."

Liberal as Gladstone was, he opposed the motion. Speaking as leader of the House, he answered Mr. Richard by the contention that the system in existence, though not ideal, did not work badly. And in what way, he inquired, would it be possible for Parliament to check the executive government? Prior communication with Parliament? A secret committee of the House? A committee would, he thought, be another cabinet.[17] How

[15] Morley, *Gladstone*, II, 552 and 560. Again in 1895 he wrote a pamphlet on the Armenian massacres. Morley, III, 521-523.

[16] This bringing of foreign policies into public discussion was extremely distasteful to the small group which had previously had exclusive knowledge of them. In 1877, when Gladstone moved a series of resolutions on Turkey, he lacked "a single approver in the *upper* official circle." Alfred E. Gathorne-Hardy, *Gathorne Hardy, First Earl of Cranbrook* (London, 1910), I, 367.

[17] In later years, a committee of the House was often urged as the solution.

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could you carry on negotiations in the face of the press and the world? He would like to associate the legislature and the executive more in this matter, but did not know how it could be done.[18] The resolution was defeated by only four votes. It was the apogee of parliamentary control of foreign policy in the earliest period in which that control really existed.

After Disraeli, Salisbury; and after Gladstone, Rosebery. Both followers differed from their predecessors, and Salisbury and Rosebery together brought about a system of control of foreign affairs more personal and autocratic even than that of Palmerston. Salisbury, naturally proud and reticent, was anti-popular in his whole conception of government. As Disraeli's foreign secretary, he had always fought (though sometimes unsuccessfully) for secrecy and irresponsibility in the control of foreign affairs.[19] After he became prime minister, he achieved his end. To an unprecedented extent, he put himself outside the field of criticism. He combined the two offices of prime minister and foreign secretary, with the result that the conventional check of the one upon the other was lacking. He was a member of the House of Lords, and there immune from any direct contact with the House of Commons. At the beginning of his career he received a shock, it is true, when his government of 1880 was dismissed by the electorate because, as he thought, they disapproved of his conduct of foreign policy. He felt that, if the electorate were in control, no foreign policy worthy of the name was possible. "Under democratic control England must abandon all idea of influence upon the world's affairs; her statesmen must henceforth be content with a hand-to-mouth diplomacy which attempted no provision for the eventualities of the future."[20] But to his delight a change came. A tradition of national policy independent of party changes was created,[21] and the Foreign Office became as impenetrable and irresponsive as the tomb.

[18] The debate is in 303 *Hansard's Debates*, 3s., 1386-1423.

[19] For examples, see Gwendolen Cecil, *op. cit.*, II, 157, 163, 187-98, 217, 275-77.

[20] The words quoted are those of Lady Gwendolen Cecil, *op. cit.*, II, 380-81.

[21] Lord Rosebery first formulated the desire for an agreed policy. He expressed

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In addition to Salisbury's desire to control foreign affairs in his own way, and Lord Rosebery's romantic imperialism, three elements caused the change from a partisan and open discussion of foreign policy to the general acceptance of an agreed policy quietly administered. First of all, there were stirring domestic and "imperial" questions, such as Ireland, South Africa, and later the tariff, to occupy the attention of Parliament and the people. Second, there had been so many new developments in Europe that only a specialist could understand foreign affairs. And third, after the retirement of Gladstone, no Liberal was left to conduct an effective opposition to what Salisbury was doing. Rosebery, though he soon dropped out of Liberal party councils, always retained the reputation of being the only Liberal who was thoroughly conversant with foreign affairs. As such, he was the only Liberal whose criticism of Salisbury would be effective. But his sympathy with Salisbury's aims was such that he never criticized. As an inevitable result, when upon occasion Parliament tried to exercise its legitimate supervision over foreign policy, it found difficulties put in its way.[22] Eventually, a slight but significant constitutional innovation was made to protect the Foreign Office against attack: the under-secretary of state for foreign affairs refused to answer supplementary questions in the House of Commons, the sole justification given by the leader of the House, Mr. Balfour, being that supplementary questions were embarrassing to the government.[23]

himself thus in 1895: "If there is one thing in my life I should like to live after me it is that, when I first went to the Foreign Office as secretary for foreign affairs, I argued for and maintained the principle of continuity in foreign administration." A. L. Kennedy, *Old Diplomacy and New, 1876-1922* (London, 1922), p. 65.

[22] The cession of Heligoland is an illustration. After the matter had become the subject of public interest, a series of questions were asked in the House of Commons, to none of which was the government willing to give informatory answers. After the Anglo-German agreement had been concluded, a bill was introduced to sanction it, and then for the first time the government discussed the matter. See *Hansard's Debates*, 3s., index to Vols. 346 and 347.

[23] See the discussion in 89 *Parl. Deb.*, 4s., 322-325. The innovation was maintained for several years.

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When the Conservatives had exhausted the patience of the country and Sir Henry Campbell-Bannerman, an advanced Liberal, became prime minister in 1905, a change might have been expected. But the Liberal party, which had become divided into those who were still Gladstonian in foreign policy (the "Little Englanders") and the "Liberal Imperialists" who followed the polices of Disraeli and Salisbury, had no suitable persons for foreign secretary except Rosebery and Sir Edward Grey. Both were imperialists; since Rosebery was out of it, Grey became foreign secretary. While Sir Henry Campbell-Bannerman was prime minister, Grey was under the control of a strong man with democratic ideas of foreign affairs. When Campbell-Bannerman resigned in 1908, he was replaced by Asquith, personally intimate with Grey and sufficiently sympathetic with his point of view to give him a free hand.

The long and distinguished Liberal government of Asquith, from 1908 to 1915, showed a marked tendency toward autocracy in all fields of public administration. Foreign affairs were consequently left almost entirely in the hands of the prime minister, the foreign secretary, and the secretary for war, R. B. (later Lord) Haldane, all honest and intelligent men, but none of them inclined to appeal for parliamentary or popular support for their policies.[24] Without any positive desire to prevent the House of Commons from exercising its rights, they usually acted without consulting it; and when the war of 1914 began, the House of Commons realized that knowledge of England's international situation and obligations had not been shared even by all members of the cabinet.

The fact that autocracy ruled the foreign policy of England had not gone completely unobserved. "In practice, if not in theory," wrote Sidney Low in 1912, "our diplomacy approaches rather more closely to the ideas of Metternich than to those of George Canning. . . . In practice it comes to this:

[24] In his *Autobiography* (Garden City, 1929), pp. 231-33, Lord Haldane explains why members of the cabinet conducted the affairs of their departments as they liked, without consultation.

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that we are almost at the mercy of two men—the foreign secretary and the premier—in the domain of foreign policy.''[25] These words were written shortly after the great debate of 1911 on the relations between England and Germany. This debate, one of the comparatively few on foreign policy during Asquith's premiership,[26] indicated a cleavage between two wings of the Liberal party—the official wing, now sympathetic with the methods of Salisbury, and the radicals, many of whom later joined the Labor party and furnished some of its ideas.

Mr. Asquith justified the government's conduct by stating that ''the processes of diplomacy must be carried on under the cloud of confidence and more or less of secrecy. But that is quite a different thing from stating that the purposes and aims of foreign policy should be kept in darkness from the representatives of the people. I want to say quite frankly that, so far as I and my colleagues are concerned, we cannot plead guilty to any such charge.''[27]

In other words, a Liberal prime minister implied that both the formulation of policy and its administration belonged to the government alone, and that the House of Commons need not be told of a policy until it had been carried into effect. This view was apparently shared by Mr. Bonar Law, leader of the Unionist party.[28] Mr. Ramsay MacDonald, leader of the Labor party, said that people should know more of what was going on, and referred to the suggestion that a House of Commons committee on foreign affairs should be instituted.[29] Others, including Mr. E. J. Dillon for the Irish, and Noel Buxton, Arthur Ponsonby, and Josiah Wedgwood for the radical part of the Liberal party, protested in their various ways that the situation was bad.[30] Mr. Buxton suggested that ''the Foreign Office

[25] Sidney Low, ''The Foreign Office Autocracy,'' *Fortnightly Review*, Vol. 97 (January 1, 1912), pp. 3 and 5.

[26] Compare H. M. Swanwick, *Builders of Peace; Being Ten Years' History of the Union of Democratic Control* (London, 1924), 41. The debate occurred in November and December, 1911, after the Moroccan negotiations.

[27] 32 *H. C. Debates*, 5s., 107. The whole debate is at pp. 43-166 and 2543-2662.

[28] *Ibid.*, p. 43. [29] P. 80.

[30] Later these three Liberals became members of Labor governments.

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attitude towards us [i.e., the House of Commons] is somewhat like that of the English lady, who was journeying in Italy, towards the natives. She made no remarks to the Italians, and her friends asked her why, when she could speak Italian freely, she would not do so. She said, 'They are only foreigners, it only encourages them.' "[31] Mr. Buxton also said: "Parliament *qua* Parliament might as well not exist so far as foreign affairs and foreign relations are concerned under the present system."[32] Mr. Ponsonby said: "One always feels—I always feel —when talking about foreign politics or putting a question on them as if I was committing a very fearful indiscretion . . . I think questions on foreign affairs are a most unsatisfactory way of elucidating information. But it is our only weapon, and we must continue to use it."[33]

The war of 1914 increased the secrecy and irresponsibility in the control of English foreign affairs. Not only did Asquith and Lloyd George completely refuse to confide in Parliament, but the opinions of other statesmen became more reactionary. In 1916, Lord Robert Cecil, ordinarily a moderate man, told the House of Commons that responsibility must be left to the government; and Sir Edward Carson, always an extremist, agreed, and maintained further (in striking opposition to the convention of the constitution) that as long as the government keeps the confidence of the House, so long must the House back up its foreign policy.[34] During the existence of the war cabinet, the control of foreign affairs was still further limited,

[31] P. 118. [32] P. 2590.

[33] P. 2617. The only tangible result of this debate was an investigation as to parliamentary control of foreign policy in other countries. The investigation, made by the English government through its diplomatic representatives, showed that real parliamentary control of foreign policy existed in Europe only in Switzerland, the Netherlands, and Norway. *Parliamentary Papers,* Cd 6102 of 1912-13. There is a continuation, Cmd 2282 of 1924-25.

[34] Joseph Barthélemy, *Démocratie et Politique Étrangère* (Paris, 1917), 133. Even Gilbert Murray doubted in 1916 that the results would have been better had the English foreign secretaries since the Boer War always been obliged to ask themselves if Parliament would approve what they thought of doing. See his "Democratic Control of Foreign Policy," *Contemporary Review,* Vol. 109 (February, 1916), 180-192.

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because the foreign secretary no longer sat in the cabinet but was subordinate to it, and the prime minister might deal with other nations himself and disregard the foreign secretary altogether.[35]

At the same time, a small but increasing group of people who believed that autocracy had resulted badly in England agitated for a restoration of parliamentary control. They worked both in Parliament and in the country. On their initiative, the question of a committee on foreign affairs was debated by the House of Commons in 1918. Mr. C. P. Trevelyan, a former member of the government, who resigned in 1914 when England entered the war, moved: "That in the opinion of this House, a standing committee of foreign affairs should be appointed, representative of all parties and groups in the House, in order that a regular channel of communication may be established between the foreign secretary and the House of Commons which will afford him frequent opportunities of giving information on questions of foreign policy and which, by allowing members to acquaint themselves more fully with current international problems, will enable this House to exercise closer supervision over the general conduct of foreign affairs."

Mr. Trevelyan explained that it was the House of Commons' control of *policy,* not of every *act,* that he desired to secure. He was supported by Mr. Ponsonby, who pointed out that of the four regular opportunities the House had for the discussion of foreign affairs—the Foreign Office vote, the Consolidated Fund bill, motions for adjournment, and questions—the first three were unsatisfactory, and suggested that the proposed committee be of thirty to fifty members, its membership to be approved by the House of Commons. No method of control is perfect, he said, but a committee would help. It was suggested by others that a sort of collusion between the front benches kept foreign affairs out of the public gaze, and that a

[35] See the war cabinet *Report for 1917* (Cd 9005 of 1918), 1-4. Kennedy, *op. cit.,* 279, says that both Balfour and Curzon "acquiesced in the virtual relegation of the Foreign Office to a subsidiary department of the premiership."

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committee would prevent such a condition. The House as a whole paid little attention to the motion, which was looked upon as the whim of a pacifist.[36]

In the country, this same group of men agitated for liberal ideas of foreign policy control through the Union of Democratic Control, founded in September, 1914, by C. P. Trevelyan, J. R. MacDonald, Norman Angell, E. D. Morel, and Arthur Ponsonby.[37] Its first and chief aim was "to secure real parliamentary control over foreign policy, and to prevent it being again shaped in secret and forced upon the country as an accomplished fact."[38] If in the House of Commons these men were disregarded as pacifists, in the country they were often persecuted as unpatriotic or prosecuted as seditious. The effects of their activity did not show themselves until after the war was over.

When some measure of popular government returned to England after the armistice, the conflict, as yet unresolved, was renewed between autocracy and democracy in foreign policy control.[39] Mr. Lloyd George, with a reputation as a popular statesman to maintain, suggested that, beginning with the making of the treaties of peace in 1919, the conduct of foreign affairs was to be more popular and democratic. In the making of the treaties of 1919 he did indeed show himself occasionally responsive to feelings of members of Parliament—particularly

[36] The debate is in 104 *H.C. Deb.*, 5s., 841-901. The suggestion of a foreign affairs committee has been recurrent both inside and outside Parliament. See the debate of 1886 above. Low, *op. cit.*, says that he suggested such a committee some years ago. George Young, *Diplomacy Old and New* (New York, 1921), Ch. II, argues lengthily for it. Arthur Ponsonby, in his Fabian pamphlet *Democracy and the Control of Foreign Affairs* (London, 1912), thinks that a non-party committee would not work. Committees on foreign affairs have recently been instituted in the Belgian Chamber of Deputies and the Norwegian Parliament. Cf. *Parliamentary Papers*, Cmd 2282 of 1924-25.

[37] Swanwick, *op. cit.*, Ch. I.

[38] Swanwick, *op. cit.*, 32.

[39] It was a period, says Toynbee, when "the conduct of British Empire foreign relations ceased to be centralized in Whitehall," and "when the arrangements for the conduct of them were changing and growing very rapidly." *The Conduct of British Empire Foreign Relations since the Peace Settlement* (Oxford, 1928), p. vi.

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the Conservative supporters of his coalition government[40]—and from time to time during the peace conference he addressed the House of Commons on the matter of the negotiations. Parliament as such did have an opportunity to discuss the treaties, though only after they had been signed. The precedent established in the case of these treaties has since become a generally accepted convention, and all subsequent treaties of first-rate political importance have been submitted to Parliament for consideration and approval, after their signature.[41] This was an advance in the democratic direction, definite if slight.

Early in 1919, however, on the reconstruction of the coalition government, Mr. Lloyd George made Earl Curzon his foreign secretary. Lord Curzon, trained in and approving of the old autocratic methods, coöperated with the prime minister in a foreign policy which was largely personal and secret, and which often changed from day to day. The results achieved gave no great satisfaction,[42] but when Mr. Bonar Law succeeded as prime minister, Lord Curzon was retained in his position,[43] and the Conservative ministries of Mr. Bonar Law and Mr. Stanley Baldwin, from 1922 to 1924, might be described

[40] For instance, the celebrated telegram signed by over 370 M.P.'s demanding that he fulfill his election pledges on reparations. Henry Wickham Steed, *Through Thirty Years, 1892-1922: A Personal Narrative* (London, 1924), II, 320-321.

[41] See Halsbury, supplement no. 16 (1926) on treaties since the war. "Every treaty since 1919 has been ratified by Parliament," says Swanwick in *Encyclopædia of the Labour Movement,* ed. H. B. Lees-Smith (London, 1928), I, 291, rather inaccurately.

[42] "The new diplomacy consists in giving to the papers certain conclusions. So far as Parliament is concerned, it is a reassertion of the old autocracy," said Earl Midleton, a former Conservative under-secretary for foreign affairs, on February 7, 1922. See 49 *House of Lords Debates,* 5s., 40.

[43] The fall of the government of Lloyd George was occasioned by the Chanak difficulty, a matter for which Lord Curzon was in no way responsible. The incendiary declaration which caused the government's sudden unpopularity was the work of only four or five men (particularly Lloyd George and Winston Churchill). The cabinet was not consulted, and the foreign secretary learned of it from the newspapers. *Foreign Affairs* (London), IV, 117 (December, 1922). An excellent analysis of the Chanak (or Chanâq) incident will be found in Toynbee, *op. cit.,* 46-52.

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not only as Conservative in foreign policy, but as reactionary in regard to methods of conducting foreign affairs. Parliament itself seemed satisfied with the loss of its influence. It is true that the more advanced members of Parliament, encouraged by the growth of liberal feeling in the country,[44] made attempts to advance their ideas, but without success. On November 27, 1922, Mr. Ponsonby asked if the government would in the future submit all treaties, agreements, and conversations with foreign powers to the House of Commons for approval. The prime minister answered that he was not prepared to commit himself to the grave constitutional changes proposed, and refused to allow a day for discussion.[45] With such a move failing in the English Parliament, a letter dated July, 1923, was sent to all members of all Dominion parliaments, signed by J. R. MacDonald and many other Labor and a few Liberal M.P.'s. Explaining that "a number of members of Parliament in Great Britain have for a long time been considerably exercised at the growing usurpation of the British cabinet over foreign policy," and asking the coöperation of the Dominion M.P.'s, it set forth the program of the reformers in the following "Annex": "That, in the opinion of this House, no act of war against a foreign state shall be committed directly or indirectly without the consent of Parliament; no international treaty whatever shall be ratified until it has been submitted to and approved by Parliament; no diplomatic agreement or verbal or written understanding with a foreign state, involving, even indirectly, military obligations, shall be finally concluded without the consent of Parliament; and no preparations for coöperation in war between the naval or military staffs and the naval or military staffs of a foreign state shall be lawful without parliamentary sanction; and this resolution shall be communicated to all states with which we are in diplomatic relations and to the League of Nations."[46]

[44] In the election of 1922, E. D. Morel defeated Winston Churchill as candidate for Parliament in Dundee. Morel was one of the most notorious of the "pacifists."

[45] 159 *H.C. Deb.* 272. See *Foreign Affairs* (London), IV, 118 (December, 1922).

[46] *Foreign Affairs*, V, 23-24.

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Such was the situation when suddenly, in 1924, there came into power a government most of whose members were pledged to a democratic control of foreign policy. No less than nine members out of Mr. MacDonald's cabinet of twenty-one were members of the Union of Democratic Control.[47] Mr. MacDonald himself took the Foreign Office, and Mr. Ponsonby, the most rigorous proponent of democracy, became under-secretary for foreign affairs. The Labor party was now, as far as administration was concerned, in a position to put its ideas into practice, though handicapped by the fact that its government existed only on sufferance and had to make a reputation for parliamentary conservatism. What the new government attempted to achieve was significant, being nothing less than parliamentary control of the treaty-making power. During the debate on the treaty of Lausanne, Mr. Ponsonby announced for the government "the intention of His Majesty's Government to lay on the table of both houses of Parliament every treaty, when signed, for a period of twenty-one days, after which the treaty will be ratified."[48] He announced further that during their term of office the ministers would inform the House of "all agreements, commitments, and understandings which may in any way bind the nation to specific action in certain circumstances."[49]

The Labor party held office only nine months—so short a time that the new policy was hardly tested.[50] On their return to power, the Conservatives, true to their principles, reversed the policy. Sir Austen Chamberlain, the new foreign secretary, stated that the government to which he belonged did not consider itself bound by the precedent of the late government to

[47] Swanwick, *op. cit.*, 166-67.

[48] April 24, 1924. 181 *H.C. Deb.*, 5s., 2003.

[49] *Ibid.*, 2003-4. This declaration of the government, a marked innovation, did not go far enough completely to satisfy all the reformers. See *Foreign Affairs*, V, 249 (June, 1924).

[50] The business of the "Red" letter which caused the fall of the government was essentially a domestic question. It did suggest, however, to many observers one difficulty in the way of a more democratic conduct of foreign affairs: the probable preference of the permanent staff of the Foreign Office for old aims and methods.

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lay all treaties on the table for twenty-one days before ratification.[51] The "old era of secret treaties is to be gone back to again," was Mr. Ponsonby's comment;[52] but the Conservative majority in the House of Commons was complacent under the prospect.[53]

During the ensuing four years of Conservative rule, the foreign affairs of England were conducted with little consultation of Parliament, and policies were very largely determined by one man. Whatever may be the final judgment on the foreign policy of the second Baldwin government, there is no question that many of its more important developments arose out of personal and private negotiations between the English foreign secretary and statesmen of other countries.[54] Chamberlain seems to have created a series of relationships, not formal enough to be called alliances, between England and other European countries, the nature of which was concealed from Parliament and was probably not a matter of general cabinet information.[55]

In only one respect during this period of Conservatism, did control and conduct of foreign policy grow more open. The dominions secured a definite understanding that they must give their approval in advance before the English government

[51] 179 *H.C. Deb.*, 5s., 565, December 15, 1924.

[52] *Ibid.*, 712.

[53] The Labor party's motion attacking the government was lost 132 to 363. *Ibid.*, 759.

[54] Sir Austen received almost sole credit in England for the success of "Locarno," and took equally the responsibility for the significance, whatever it was, of the confidential relations he entered into with Briand, foreign minister of France, and Mussolini, dictator of Italy.

[55] It is probable that nothing which could be called a secret treaty was made. Well-informed Englishmen were sure, in 1927, however, that a definite understanding existed between the governments of England and Italy. It is hardly necessary to call attention to Article 18 of the Covenant of the League of Nations providing for the registration of "treaties and engagements." England has presumably lived up to this article. Its one effect on the internal development of English foreign policy would be to limit the binding force of "understandings," "conversations," etc., to the statesmen who make them. It would not prevent an understanding, practically as binding as any treaty, between the Italian government and any given British government.

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could bind them by its action on matters of foreign relations, and that treaties imposing obligations on any part of the Empire should be signed by a representative of the government of that part. The result was to impose an additional and very effective check on the English ministry in all matters of foreign policy affecting the dominions.[56]

During the tenure of office of the Conservatives, members of the Opposition continued their attempts to establish a new order of things. Early in the life of the Conservative government, the Labor party adopted a resolution that "no treaty or conversation of any kind shall be binding upon this country or will be recognized as such by any future Labor government until it has been confirmed by Parliament."[57] On March 11, 1925, Mr. C. P. Trevelyan made a motion in the House of Commons in words similar to those of the program of 1923, but more definite still. He moved: "That no treaty shall be ratified and no diplomatic arrangement or understanding with a foreign state involving, directly or indirectly, national obligations shall be concluded without the consent of Parliament, and no preparations for coöperation in war between the naval, military, or air staffs, and the naval, military, or air staffs of a foreign state shall be lawful unless consequent upon such arrangement or understanding; and this resolution shall be communicated to all states with which this country is in diplomatic relations and to the League of Nations.]"[58]

[56] On this whole question, see Arthur Berriedale Keith, *Responsible Government in the Dominions* (2nd ed. revised to 1927, London, 1928), Part V, Ch. V. The situation was clarified in the "Balfour Report" of the Committee on Inter-Imperial Relations of the Imperial Conference of 1926.

The Chanak incident of 1922 was the turning point in dominion autonomy in foreign relations. Two dominions which were asked by the English government to send troops to act against Turkey did not agree to do so, and the refusal of the Canadian government was marked by expressions of definite disapproval of a situation in which a few Englishmen could involve in war dominions which had not previously known anything about it. It is noteworthy that the English government several times clearly and emphatically indicated to the Canadian government that it did not want the correspondence in the matter laid before Parliament. Toynbee, 46-52.

[57] *Foreign Affairs*, VI, 223 (April, 1925).

[58] 181 *H.C. Deb.*, 5s., 1430.

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Mr. Trevelyan explained that the Labor party opposed the "hatching of peace in secret even by well-intentioned rulers," and wanted foreign policy as much in the control of the House of Commons as domestic policy had been for a hundred years. He referred to the attempt of the late Labor government to inaugurate a gradual change, and its reversal by the Conservative government. Mr. Ronald McNeill, under-secretary for foreign affairs, replied for the government that Mr. Trevelyan was trying by resolution to modify the prerogative of the crown, and went on to point out that first-class treaties always have legislation to put them into force, the legislation being proposed between the signature and the ratification,[59] and that many other matters are small, or require speed, and so cannot be brought into Parliament. Sir John Marriott, a Conservative, expressed the opinion that the House of Commons has more real control over foreign affairs than any other European parliament,[60] though he would have lent an attentive ear to a request for a parliamentary committee on foreign affairs.[61] The objects of foreign policy should be under parliamentary control, he believed, but "the mechanism . . . must in the interest of peace be committed to trained and expert hands."[62] The Labor motion was lost by 133 to 255 votes.[63]

Again, July 11, 1927, in the debate on the Foreign Office vote, Mr. Ponsonby raised the issue of conduct of foreign relations. He complained of the reticence of the foreign secretary. On this occasion Sir Austen Chamberlain defended himself, not altogether ingenuously, by stating that the government "will undertake no future engagements on behalf of our country without submitting those engagements to Parliament and hav-

[59] P. 1438.

[60] P. 1454.

[61] Twice late in 1928 (November 13 and December 20) the suggestion of a committee on foreign affairs was again made, by Mr. L'Estrange Malone. On the second occasion, Sir Austen Chamberlain expressed his objections. 222 *H.C. Deb.*, 5s., 795-96, and Vol. 223, pp. 3412-24.

[62] Sir John, of course, evaded the issue which the Labor party was raising, that objects and mechanism are often indistinguishable.

[63] The debate is in 181 *H.C. Deb.*, 5s., 1430-78.

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ing the approval of Parliament for them . . . ," and that "we have made, as a government, no binding engagement committing us to ultimate action in case of war without those engagements being submitted to this House and without the House having an opportunity to express its opinion."[64]

To the end of its term of office, the Conservative government continued its policy. Another reversal came with the accession to power of the Labor government of 1929. At once the Labor ministry announced, through the mouth of its foreign secretary, a return to its policy of 1924.[65] The second Labor government was, however, preoccupied with domestic matters. Except for the Naval Conference of 1929, with the five-power treaty which was approved by the passage of a bill through both houses of Parliament, little occurred to exhibit the new policy in practice.

A partial and incomplete victory has thus been won in England for more popular control of foreign affairs. Though recent Conservative governments have attempted to follow out the traditions of Salisbury and Asquith, nevertheless, under pressure of the dominions and of Parliament, the field of irresponsibility has been limited. Labor, on achieving power, has acted on new principles, and the Labor party has declared itself as favoring even greater popular control than so far exists. Though the exact nature of future developments cannot be foreseen, any return to pre-war secrecy and irresponsibility seems improbable.

[64] The adjectives "binding" and "ultimate" appear to be an essential part of the statement. The debate is 208 *H.C. Deb.*, 5s., 1762-1890. Only two days after this speech by Sir Austen, a question in the House of Commons elicited the fact that a treaty with the Hedjaz had been signed, and the promise that it would be "published after ratification." *Ibid.*, 2120.

[65] July 17, 1929. 230 *H.C. Deb.*, 5s., 408.

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THE JAPANESE PRIVY COUNCIL*

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VI. THE POLITICAL ACTIVITY OF THE COUNCIL

The growth of the democratic element in Japanese government has not been without effect on the Privy Council. In the early years of its history, the Council and the ministry were institutions serving the same classes and seeing eye to eye. This was true not only under the presidency of Ito, Oki, and Yamagata (1889-94), but also even during a considerable part of the period when party government was struggling for supremacy. In those days, political parties in the House of Representatives were balked by the bureaucrats, clansmen, and militarists entrenched in the administrative branch, while the seats in the Council were occupied by the great leaders of these controlling classes. But the doctrine of ministerial responsibility had begun to take root. In 1895, the Ito ministry abandoned the principle of executive independence of political parties and accepted an alliance with the Jiyuto, or Liberal party. In 1898, the Kenseito, or Constitutional party, under the leadership of Okuma and Itagaki, was given the opportunity of forming the first party cabinet in the history of Japan. Upon its fall, caused by internal dissension, the succeeding ministry under Yamagata (1898-1900) contained no party men, although the premier condescended to an alliance with the Kenseito. In 1900, Ito himself formed the Seiyukai, and brought the second party cabinet into office. But it was not until the first Kenseikai ministry, under Okuma and Kato (1914-16), and the fifth Seiyukai ministry under Hara (1918-21), that well-grounded ministerial parties controlled the lower house. And even then, the day of no-party cabinets had not passed, for after the assassination

* The first instalment of this article appeared in the August number of the REVIEW. (*Erratum:* page 604, line 13, should read "1890," not "1930.")

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of Hara and the disintegration of his party under Takahashi came three transcendent cabinets (Admiral Kato, 1922-23; Admiral Yamamoto, 1923-24; and Viscount Kiyoura, 1924). Following the resignation of the Kiyoura ministry, party government has made rapid progress. The bureaucrats and clansmen are now subordinated to the ministry; the solitary survivor of the Genro has pronounced himself in favor of parliamentary selection of the premier; the military clique has been weakened by the victory of the cabinet in the struggle over the ratification of the London Treaty; and the House of Representatives is beginning to overshadow the House of Peers.

Under this changing system, the ministers of state have tended to become experienced parliamentarians and more free from bureaucratic, clan, and militaristic influence. On the other hand, the personnel of the Privy Council has not materially changed in this respect. Thus, while the cabinet appears to be more representative of the new democracy in Japan, the Privy Council remains largely composed of bureaucrats, militarists, clansmen, and peers—representatives of the old order. At the same time, there has been a decided modification in the political relationships of the councillors. Under the presidency of Prince Ito and his immediate successors, the Privy Council preserved the impartial and aloof position assigned to it in the constitution. So strictly was impartiality observed that in 1891 Okuma was dismissed from the Council for holding parley with Itagaki, the leader of the Jiyuto.[56] The tendency toward political activity was manifest during the second Yamagata ministry (1898-1900). Party government had made its appearance, and although Prince Yamagata came to terms with the Kenseito, led by Hoshi, he sought to preserve the influence of the bureaucracy against the rising tide of political parties. The Kenseito supporters were rewarded by an increase in the salary of parliamentary members and by a disguised form of bribery in the sale of governmental forests and vacant lands; but the door to government posts was partially

[56] Compare Kudo, *Teikoku Gikaishi* (1901), Vol. I, p. 97.

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closed by a new ordinance severely restricting the appointment of officers of *Chokunin* rank.[57]

As late as 1910, Dr. Uyehara could write that there had been no serious conflict between the cabinet and the Privy Council, as "both have been and still are occupied by men of the same mode of thinking, in personal and intimate relations with each other, and both are responsible to the Emperor and not the Diet."[58] Although the cabinet of Admiral Yamamoto engaged in a serious brush with the Privy Council in 1913, it was not until 1922 that there began the long series of recurring conflicts between Council and cabinet which have been concomitant phenomena with the growing dependence of the cabinet upon the House of Representatives.[59]

The controversy of 1922 is indicative of the increasing degree in which the Privy Council has abandoned its advisory for a supervisory capacity. One of the supreme issues at this time concerned foreign policy. The cabinet had adopted a program aiming to conciliate international attitude toward Japan occasioned by the aggressive policy in Manchuria and Shantung during the World War, of which the Twenty-one Demands of 1915 had been typical. The concessions made by Japan at the Washington Conference of 1921 were the first steps in the new diplomatic venture, and immediately won the applause of the world. In the Council, however, the reversal of policy toward China met the determined opposition of Count Ito-Miyoji and the little group of leaders, who now hoped to discredit Uchida, the foreign minister, and drive him from office.[60] It

[57] Compare article by Dr. Takeuchi on "The Japanese Civil Service," in *Civil Service in the Modern State* (Chicago, 1930), p. 520. Offices of *Shinnin* rank include such posts as ministers of state, ambassadors, privy councillors, and the procurator-general of the Supreme Court. *Chokunin* rank includes vice-ministers, prefectural governors, bureau directors, and parliamentary counsellors.

[58] Uyehara-Etsujiro, *Political Development of Japan* (London, 1910), p. 149.

[59] The controversy in 1913 concerned the policy of the cabinet to extend the list of army and navy officers eligible to appointment to the portfolios of War and Navy, as well as the proposed amendment to the *Bunkan Ninyo Rei,* or Ordinance Concerning the Appointment of Civil Officials.

[60] Compare article on "The Truth Regarding the Memorial of the Privy Council," in *Gaiko Jiho,* or "Revue Diplomatique," (Jan. 15, 1923), Vol. XXXVII, no. 2, pp. 415-423.

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was impossible to block ratification of the Washington treaties; but the relaxation of Japanese intervention in China might be retarded. A point of attack for this purpose was found in a technicality regarding the Sino-Japanese postal convention of December 8, 1922, withdrawing Japanese post-offices in China.

This convention had been negotiated by the Kato cabinet in fulfillment of one of the obligations of the Washington agreements. Apprehensive of the Council's hostility, the cabinet apparently moved to secure the Emperor's sanction to bring the convention into effect before its submission to the deliberation of the Council—a procedure not entirely consistent with past practice. The leaders of the Council seized this opportunity to impugn the ministry's Chinese policy all along the line, and, on December 29, 1922, adopted a memorial to the Emperor. The cabinet then offered a counter-memorial; whereupon the lord keeper of the privy seal and the grand chamberlain were charged by the Prince Regent to consult with the two Genro (Marquis Matsukata and Prince Saionji) and prepare an imperial message urging coöperation, which in due course of time was delivered to the president of the Council and the premier.[61]

The ministry was considerably shaken by the Council's attack. Its position was indeed awkward, for the Diet had been allowed to labor under the impression that the treaty had come into effect with the Emperor's sanction, and later learned that the cabinet had accepted the Council's demand that it be regarded as an executive agreement not requiring ratification.[62]

[61] *Tokyo Asahi Shimbun,* Jan. 23, 1923, p. 1; *Japan Weekly Chronicle* (Kobe) Jan. 23, 1923, p. 112; Feb. 1, p. 133. Admiral Kato repeatedly refused to divulge in the Diet the content of any of these state papers, but enterprising newspapers published what was generally accepted as the text of the Council's memorial and the cabinet's counter-address. *Tokyo Asahi Shimbun,* Jan. 24, 1923, p. 1; *Tokyo Nichi Nichi Shimbun,* Jan. 24, 1923, p. 1; *Kwampo gogai,* Jan. 26, 1923, pp. 73-81, and Feb. 2, 1923, pp. 120-121; *Dai Shijurokkai Teikokugikai Shugiin Yosan Iinkai Giji Sokkiroku,* or Forty-Sixth Diet: House of Peers Budget Committee Proceedings, Pt. i, no. iii, p. 9. Compare *Japan Weekly Chronicle* (Kobe), Feb. 8, 15, and 22, March 1, 1923, pp. 182, 224, 227, 265, 295.

[62] For the statements in the Diet, see *Kwampo gogai,* Jan. 26, 1923, pp. 73-81; *Dai Shijurokkai Teikokugikai Shugiin Yosan Iinkai Giji Sokkiroku,* Pt. i, no. ii, pp. 4-6; no. iii, p. 9; no. v, pp. 13-14. For the accounts of the "understanding" with the Council, see Miyata-Mitsuo (ed.), *Admiral Kato-Tomosaburo Den,* or

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The opponents of the cabinet in the Diet took full advantage of the cabinet's blunder, while the newspapers denounced the premier's change of front. As a result, the Council scored a point against the cabinet, although it failed to block the liberal policy toward China.

VII. THE OVERTHROW OF THE WAKATSUKI MINISTRY

The climax of the Council's assertion of supervisory powers came in 1927 with the overthrow of the Wakatsuki ministry. The occasion was the attempt of the cabinet, during the financial depression, to avert a series of bank failures by allowing the Treasury to guarantee the Bank of Japan against all advances, up to 200,000,000 yen, which it might make to the semi-official Bank of Formosa, then on the verge of failure. On April 14, the cabinet reached a decision to enact the guarantee by means of an "emergency imperial ordinance." Thereupon the premier was admitted to an audience with the Emperor to explain the situation, and on his return from the palace he visited Baron Kuratomi, president of the Privy Council, asking for immediate consideration by the Council.[63] Without delay, the president appointed a committee of investigation headed by the vice-president, Dr. Hiranuma. Within two days, the special committee reported unfavorably to the ordinance. Baron Kuratomi then hastened to the official residence of the premier urging him to withdraw the proposed draft and to offer a new solution. The cabinet, however, determined to refuse any compromise with the Council.

A visit by Wakatsuki's private secretary to Prince Saionji,

"Life of Admiral Kato-Tomosaburo," (Tokyo, 1928), pp. 163-165; *Tokyo Asahi Shimbun*, April 12 and 13, 1923, p. 1; *Jiji Shimpo* (Tokyo), April 12, 1923, p. 1; *Japan Weekly Chronicle* (Kobe), April 19, 1923, pp. 548-549. It should be observed that Japanese jurists hold that executive agreements not requiring ratification need not be submitted to the Privy Council for approval. Cf. Minobe, *Gendai Kensei Hyoron* (1930), p. 104.

[63] *Tokyo Asahi Shimbun*, April 15, 1927, p. 3; *Osaka Mainichi Shimbun*, April 15, 1927, p. 1; *Jiji Shimpo*, April 15, 1927, p. 1. Compare *Japan Weekly Chronicle* (Kobe), April 21, 1927, pp. 452-453; *Japan Advertiser* (Tokyo), April 15, 1927, p. 1.

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the last of the Elder Statesmen, apparently brought no solution. Accordingly, on April 17, the Council met at the imperial palace in the presence of the Emperor.[64] The meeting was attended by Baron Kuratomi and twenty other privy councillors; the Government was represented by the premier and eight ministers of state. Baron Hiranuma, chairman of the special committee, reported a recommendation that the ordinance be rejected. The premier addressed the Council in support of the measure, and was followed by Count Ito-Miyoji and Viscount Kaneko, who bitterly opposed the Government's proposal as unconstitutional. Finally, the ordinance was rejected by a vote of all of the privy councillors. The cabinet then retired to the premier's official residence and voted to resign; within the next hour, newspaper reporters watched the premier hasten to the imperial palace to tender the joint resignation of the ministry, and the grand chamberlain set out on his way to the villa of the Elder Statesman in Kyoto to seek his advice on the appointment of a new premier.

Politics in any country is full of ironies, and Japan is no exception. The Kenseikai cabinet had met defeat because of their proposal to aid the banks by the sum of 200,000,000 yen, whereas the Tanaka government, which now came into power, summoned the Diet and secured a guarantee of 700,000,000 yen. The parties in this short session of the Diet were almost evenly matched, and thus, while the Seiyukai mustered sufficient votes to pass the cabinet's financial program, the Minseito secured the passage of an impeachment resolution *(dangai-an)* condemning the Privy Council for an alleged violation of the constitution in obstructing the policy of the Wakatsuki ministry.[65] The spirit of the rebuke is typified by a passage

[64] Full, and apparently accurate, accounts of this secret meeting appeared in the newspapers. *Tokyo Asahi Shimbun*, April 17 and 18, 1927, pp. 1 and 4; *Jiji Shimpo*, April 18, 1927, p. 1; *Osaka Mainichi Shimbun*, April 17 and 18, 1927, pp. 1, 3, and 4. Compare *Japan Weekly Chronicle* (Kobe), April 21, 1927, p. 444; *Japan Advertiser* (Tokyo), April 18, 1927, p. 1.

[65] The text of the *dangai-an* was as follows: "Be it resolved, That the Privy Council acted improperly in reporting to the Throne its opinion against the Emer-

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from one of the speeches in favor of the resolution which ran: "The Privy Council has acted *ultra vires* in rejecting an important policy formulated by a party cabinet which enjoyed an absolute majority in the House of Representatives. Its action was tantamount to a defiance of the popular wishes. The Privy Council is an enemy to democracy; the House should unite in removing this menace to democratic rule."[66]

The Privy Council's victory over the cabinet had been largely due to certain untoward circumstances; the cabinet was unpopular; the country was in the midst of a financial depression (a recurring event which in all countries is more or less associated in the popular mind with the existing ministry); the ministry barely commanded a majority in the House of Representatives while its chief support, the Kenseikai, had less than a majority; and finally the ministry proposed the emergency imperial ordinance barely two weeks after the adjournment of the Diet—an act which raised the suspicion that the cabinet had despaired of securing the Diet's consent to its relief policy, and thus expected to proceed in defiance of the legislature. At the same time, the outburst of indignation from the liberal and conservative press after the announcement of the cabinet's new financial policy encouraged the Privy Council to take its firm position.[67]

The constitutional question involved in this dispute is not new. Under the constitution, the Emperor may issue, by the advice of his ministers, emergency imperial ordinances dur-

gency Imperial Ordinance which had been drawn up by the former cabinet with the object of preventing the imminent financial disturbance and of preserving public welfare, thereby causing the unprecedentedly grave financial disaster." The resolution was adopted by a vote of 210 to 194. The Tanaka ministry and most of the Seiyukai opposed it. *Kwampo gogai*, May 8, 1927, p. 65. Compare *Japan Weekly Chronicle* (Kobe), May 19, 1927, pp. 548-549. After the fall of the Wakatsuki cabinet, the Kenseikai and a group called the Seiyuhonto combined to form a new party called the Minseito.

[66] *Kwampo gogai*, May 8, 1927, p. 64. Compare *Japan Weekly Chronicle* (Kobe), May 19, 1927, p. 548.

[67] For a résumé of this opinion, see the *Japan Weekly Chronicle* (Kobe), April 21, 1927, p. 453.

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ing the recess of the legislature.[68] But such steps may be taken only when the Diet cannot be convoked. The Privy Council contended that the heavy financial guarantee to the Bank of Japan required the sanction of the Diet. The cabinet held that the emergency was so great that the delay of a fortnight for convoking the Diet would be disastrous.

The position of the Council as the interpreter of the constitution would have been more sound if the deliberations had been confined to the constitutional question. But it appears that the Council deliberated, not only upon the expediency of the cabinet's financial policy, but also upon its foreign program. In particular, Count Ito-Miyoji launched into a bitter attack of the Kenseikai's moderate policy in China.[69] It also appears that privy councillors had communication with Seiyukai leaders during the controversy.[70] Thus the Council itself was open to the charge of violating the spirit of the constitution by indulging in party conflict as well as by having disregarded Article VIII of the *Sumitsuin Kansei* forbidding the Council to interfere with the executives. Despite the unpopularity of the Wakatsuki cabinet, the liberal press deplored the fact that the cabinet had been stricken down by the autocratic action of the councillors.[71] The episode illuminated the irresponsible position of the Council as an obstacle to parliamentary government, and invited a deluge of proposals for its reform.

VIII. SUPERVISION OF FOREIGN POLICY UNDER THE TANAKA MINISTRY

Some Japanese publicists have seen in the abolition of the Advisory Council on Foreign Affairs a tendency on the part of the Privy Council to enlarge its supervisory activities in

[68] For the text of Articles VIII and LXX of the constitution, see footnote no. 18 *supra.*

[69] *Tokyo Asahi Shimbun,* April 19, 1927, p. 1.

[70] Compare the evidence offered by Wakatsuki in a joint meeting of the Kenseikai and Seiyuhonto. *Tokyo Asahi Shimbun,* April 24, 1927, p. 3. *Japan Weekly Chronicle,* May 5, 1927, p. 495; May 12, 1927, p. 524.

[71] For a résumé of the press, see *Japan Advertiser* (Tokyo), April 19, 1927, p. 6; April 20, p. 7; *Japan Weekly Chronicle* (Kobe), April 28, 1927, pp. 468-469.

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the field of foreign relations.[72] Whatever the case may be, it is true that since 1922 conflicts between the Council and the cabinet over foreign policy have been more frequent. Even the Seiyukai ministry under General Tanaka (April, 1927-July, 1929) found itself considerably circumscribed by the Council, despite the fact that the party's so-called "positive policy" in Chinese relations conformed to the ideas of Count Ito-Miyoji and the reactionary leaders. When this policy, which had led to the unhappy events of the Japanese intervention at Tsinanfu, finally broke down in the spring of 1929, and the cabinet at last decided to withdraw the Japanese troops from Shantung, it was compelled to resort to a ruse to outwit the Council. Thus the important Sino-Japanese agreement of March 28, 1929, for the evacuation of Shantung was put in the form of an executive agreement, or exchange of notes, rather than a treaty in order to avoid its submission to the Council.

Various privy councillors took exception to this procedure, declaring that it was a violation of the constitution and of the *Sumitsuin Kansei,* and allowed their opinions to reach the press.[73] Meanwhile, General Tanaka had audiences with the Emperor and spent hours at the official residence of Baron Kurotomi seeking an "understanding." On April 10, the Government appeared before a plenary session of the Council hoping to secure some basis of compromise, only to be met with bitter condemnation.[74] But the agreements had been con-

[72] The Advisory Council on Foreign Affairs was set up under Premier General Terauchi during the World War. Membership included the privy councillors, the premier, the ministers of war and foreign affairs, and two party leaders—Hara (Seiyukai) and Inukai (Kokuminto). Its ostensible purpose was to formulate a consistent foreign policy for Japan; its real purpose was to minimize opposition to whatever policy the cabinet should pursue. It was abolished in 1923 during the Kato ministry. A saying ran to the effect that it was created by a general and abolished by an admiral. Compare Sasaki-Soichi, "Advisory Council on Foreign Affairs," *Kokka Gakkai Zasshi* (Aug., 1917), Vol. XXXI, no. 8, pp. 1137-1169; Yoshino-Sakuzo, *Gendai Kensei no Unyo,* or "Contemporary Constitutional Government," (Tokyo, 1930), pp. 224-229.

[73] *Tokyo Asahi Shimbun,* March 30 and 31, 1929, p. 6; April 1, p. 2; *Osaka Mainichi Shimbun,* April 2, 1929, p. 1.

[74] Full, and apparently accurate, accounts of this secret session were published

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cluded and could not be repudiated, and the cabinet was prepared to take its punishment at the hands of the Council. Indeed, it was reported in the press that General Tanaka had actually apologized both to the Emperor and to the Council and promised never again to evade the usual form of ratification. The Government, however, issued a denial of having made any such apology.[75]

The struggle between the Council and the cabinet over the ratification of the Kellogg Peace Pact which followed closely upon the Tsinan-fu contest may be viewed as an attempt to preserve the unique sacredness of the Japanese Emperor against any heedless encroachments of the modern age. It may also be viewed as an attempt of the reactionary leaders of the Council to resist even the liberal foreign policies of a militaristic cabinet. To Western eyes, the cause of the controversy was trivial. In September, 1928, attention was called to the fact that in the negotiations of the Kellogg Peace Pact the Foreign Office had failed to eliminate some language that might be considered disloyal to the Emperor, namely, the phrase in Article I to the effect that the high contracting powers had concluded the agreement "in the names of their respective peoples." On the part of jurists of the conservative school, it was held that these words violated the spirit of the constitution, inasmuch as only the Emperor can be the high contracting party for Japan, and as the will of the state can be expressed through him alone. The executive committee of the Minseito took under consideration the use of this affair as a means of attack upon the Tanaka government; but the party never pressed the issue, and did not include it in the resolutions of censure which the party leader moved in the 56th session of the Diet.[76] In answer

in the press. Compare *Tokyo Asahi Shimbun*, April 11, 1929, p. 1; *Tokyo Jiji Shimpo*, April 11, 1929, p. 1; *Osaka Mainichi Shimbun*, April 11 and 12, 1929, p. 1; *Japan Weekly Chronicle* (Kobe), April 18, 1929, pp. 455-458.

[75] *Tokyo Asahi Shimbun*, April 12, 1929, p. 1.

[76] *Kwampo gogai*, Feb. 10, 1929, p. 51. *Japan Weekly Chronicle* (Kobe), Feb. 21, 1929, p. 215. Regarding the study of this issue by the Minseito, see *Tokyo Asahi Shimbun*, Sept. 16 and 19, 1926, p. 6.

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to interpellation on this question, the premier stated the view of the Government to the effect that the pact in no way conflicted with the Japanese constitution, and that the cabinet would advise the Emperor to ratify without reservation.[77] The veteran Ozaki, who for years has played a lone hand in the Diet, tenaciously held to the antiquated constitutional interpretation and moved a resolution demanding that the Government advise the Emperor to attach a reservation to his ratification qualifying the objectionable phrase; but he found little support.[78] The course of events gave every indication of the approval of the House of Representatives, not only of Japan's acceptance of the Kellogg Pact, but also of the purpose of the cabinet to seek ratification without any explanatory reservation.

The Privy Council, however, demanded a reservation. In the ensuing negotiations between the Government and the Council, which ran over four months, the point was frequently made by certain privy councillors that the phrase "in the names of their respective peoples" had in America a democratic ring, that having been once employed in the Peace Pact it would come into frequent use in international agreements, and therefore that the Government required a rebuke and a warning to avoid the phrase in all future engagements.[79] In view of the Diet's apparent acceptance of Tanaka's statement that the pact did not require ratification with reservation as manifested by the defeat of Ozaki's resolution, the Privy Council was criticized by the liberal press as overriding the will of the representative organ of government.[80]

The Tanaka ministry was in no position long to resist the Council, even in support of a correct policy. Inquiry into the murder of Chang Tso-lin, the war lord of Manchuria, had

[77] *Kwampo gogai*, Jan. 24 and 29, 1929, pp. 52, 57.

[78] *Kwampo gogai*, March 26, 1929, pp. 1026-39. Compare *Japan Weekly Chronicle* (Kobe), April 4, 1929, p. 400.

[79] *Tokyo Asahi Shimbun*, June 12, 1929, p. 2. Compare *Japan Weekly Chronicle* (Kobe), June 20, 1929, p. 704.

[80] Compare editorials in the *Tokyo Asahi Shimbun*, April 6 and 11, 1929, p. 7.

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disclosed evidence of unsavory conditions in the Japanese military occupation of Manchuria. Ultimately, on July 2, General Tanaka himself took responsibility for the Manchurian affair and resigned, and his cabinet with him. Previously, in a plenary session of the Council, in the presence of the Emperor, the ministry accepted an arrangement whereby the Kellogg Pact should be ratified with an accompanying declaration to the effect that the words "in the names of their respective peoples" had no effect in Japan.[81] This declaration, in effect, constituted a reservation made after signature of a treaty—a very unusual procedure in Japanese diplomacy.

IX. THE RATIFICATION OF THE LONDON NAVAL TREATY

The succeeding Minseito ministry, under the premiership of Hamaguchi, in turn found its liberal foreign policy in conflict with the policy of the Council. The landmark in this controversy was the ratification of the London Naval Treaty. At the Naval Conference of 1930, Japan failed to secure the seventy per cent ratio in cruisers that she demanded, but the compromise with the United States won considerable applause for Japanese diplomacy throughout the capitals of the world. When instructing the Japanese delegation by telegram to accept the Reed-Matsudaira agreement, the cabinet found it necessary to overrule the objections of the chief of naval staff, who thereupon made a protest to the Throne.[82]

[81] As usual, the press carried full accounts of the speeches and votes in the Council. Compare the *Tokyo Asahi Shimbun,* June 27, 1929, p. 1; *Osaka Mainichi,* June 27, 1929, p. 1; *Jiji Shimpo,* April 27, 1929, p. 1; *Japan Advertiser* (Toyko), June 27, 1929, p. 1; *Japan Weekly Chronicle* (Kobe), July 4, 1929, pp. 14-15. The triumph of the Council was somewhat marred by a logical speech on the part of Count Uchida, a privy councillor and former minister of foreign affairs, who had been dispatched by the Tanaka cabinet as an ambassador to sign the pact in Paris in August, 1928, and who now pointed out the inconsistency of the declaration. The position of the cabinet also was rendered awkward when, after a vote of the Council, Count Uchida resigned as a councillor, as a means of indicating the responsibility of the cabinet for the diplomatic blunder. For the official statement issued by the Foreign Office regarding the ratification of the Kellogg Pact, see *Tokyo Asahi Shimbun,* June 28 and 29, 1929, p. 1.

[82] The instructions were drafted by the Foreign Office, over which Baron Shide-

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The interpellations upon this matter in the Diet gave satisfaction to the majority in the House of Representatives.[83] But the Naval General Staff was opposed to the ratification of the treaty, and individual privy councillors indicated to the newspapers their intention to support the General Staff as against the Government.[84] The five months' controversy which ensued was a test as to whether the Privy Council and the military clique could force a compromise out of a ministry which enjoyed an overwhelming majority in the House of Representatives. The ministry stood firm, demanding ratification without reservation or any guarantees to the militarists. Fortunately for the cabinet, the ratification of the naval treaty was almost unanimously demanded by the powerful newspapers, while it was apparent that a failure to ratify it would bring not only world-wide reproach to Japan, but also annihilation upon the Privy Council.[85] It is a tribute to the power wielded by the Council that, against a popular ministry backed by a large majority in the Diet which upheld an obviously correct foreign policy, it was able to obstruct ratification for five months.

The first stage of the controversy concerned a contest between the ministry and the Naval General Staff over the latter's demand for assurances of a rigorous program of naval

hara presided; they were submitted by Premier Hamaguchi to Admiral Kato-Kanji, chief of naval staff; they were unanimously approved by the cabinet on April 1, and on the same day were cabled to London. On the following day, Admiral Kato made his appeal to the Throne. *Tokyo Asahi Shimbun*, April 2 and 3, 1930, p. 1; *Jiji Shimpo*, April 2 and 3, 1930, p. 1; *Japan Weekly Chronicle* (Kobe), April 10, 1930, pp. 360-361. Compare a careful study of this controversy by Dr. Sterling Tatsuji Takeuchi, "Japan and the London Naval Treaty," *Institute of Oriental Students* (1930), Vol. IV, pp. 37-47.

[83] *Kwampo gogai*, May 7, 1930, pp. 79-84; May 8, pp. 88-91; May 12, pp. 126-130; May 14, pp. 179-183.

[84] *Tokyo Asahi Shimbun*, April 4, 1930, p. 1.

[85] Compare editorials in the *Tokyo Asahi Shimbun*, April 6, 11, and 26, May 7, 1930, p. 7. For summaries of comments in the Japanese press, see *Japan Advertiser* (Tokyo), May 29; June 3, 14, and 24; July 23 and 27; Aug. 5, 6, and 10; Sept. 17 and 18; Oct. 1, 1930, p. 5. *Japan Weekly Chronicle* (Kobe), May 8, 1930; Sept. 25, 1930, pp. 371-372, 470-471.

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replenishment in case the London Treaty was ratified—a contest in which the militarists were strongly heartened by intimations by privy councillors that they would not approve the treaty until agreement was reached regarding a naval plan acceptable to the General Staff.

In a controversy of this nature, the cabinet suffers the handicap of being unable to have civilians preside over the portfolios of war and navy, which under the well-known ordinances of Yamagata must be held by high ranking officers of the army and navy.[86] On this occasion, the cabinet was fortunate in that Admiral Takarabe, the minister of the navy and one of the Japanese delegates at London, had signed the treaty, and was thus bound to see it through. Upon his shoulders fell the unpleasant task of securing from the Naval General Staff a replenishment program compatible with the terms of the treaty and the national budget. Two months were spent in reaching agreement upon a naval construction program which, on July 23, won the reluctant approval of the Supreme War Council and was submitted to the Emperor.[87] On the following day, the premier was received at the imperial palace and made the usual petition to refer the treaty to the Privy Council. On the same day, the premier repaired to the official residence of Baron Kuratomi and asked for immediate consideration of the treaty.

To the exasperation of the cabinet, the president of the Council delayed the appointment of a committee of investiga-

[86] Under the ordinances issued by Yamagata in 1899, the ministers of war and navy are limited to generals and lieutenant-generals or admirals and vice-admirals. *Genko Horei Shuran* (1927), Vol. I, bk. iii, pp. 78, 88. The aim was to keep the army and navy under the control of the Choshu and Satsuma clans, and to preserve the military establishment against parliamentary interference. Compare the brilliant discussion of this subject by Yoshino in his *Niju Seifu to Iaku Joso*, or "Dual Government and the Supreme Command," (Tokyo, 1922), pp. 7-12, 43-45. Dr. Yoshino, who served until 1924 as professor of political history on the faculty of the Imperial University of Tokyo, is the chief literary opponent of the military clique in Japan. For some years he was a member of the editorial staff of the *Tokyo Asahi Shimbun*.

[87] *Tokyo Asahi Shimbun* (evening ed.), July 23 and 24, 1930, p. 1; *Japan Weekly Chronicle* (Kobe), July 31, 1930, p. 137.

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tion for more than a fortnight.[88] This committee, when finally named, was headed by Count Ito-Miyoji, a determined foe of the Government.[89] According to usual procedure, the initial meeting of a special committee is devoted to the hearing of explanations by government officials, but on this occasion Count Ito-Miyoji excluded the ministers of state and devoted the meeting to securing an agreement of the members as to the tactics to be followed.[90] Then followed a series of ten sessions, with the premier, foreign minister, and Admiral Takarabe in attendance, while the committee badgered the Government with irrelevant attacks upon the method of negotiation of the treaty.[91] The middle of September was now reached, Japanese prestige had declined because of the delay in ratification, and a deluge of criticism from the press was launched upon the obstreperous councillors. Finally, at the twelfth meeting of the committee, with no ministers of state present, the special committee surrendered and voted to recommend unconditional ratification of the treaty. On October 1, in a plenary session, in the presence of the Emperor, the treaty was formally recommended for ratification. The triumph of

[88] The delay was caused partly by the demand of Baron Kuratomi for a copy of the report of the Supreme War Council to the Throne. The Government, which consistently claimed that this report was a document of the War Council and not a cabinet paper, refused to move for its submission to the Council. Another excuse for delay was a petty quarrel with the Foreign Office over some details of translation of the treaty, such as the omission of "l" in the spelling of the name of an Italian plenipotentiary, Admiral Alfredo. Compare the *Tokyo Asahi Shimbun*, Aug. 5, 6, and 7, 1930, p. 1; *Japan Weekly Chronicle* (Kobe), Aug. 14, 1930, pp. 198-200.

[89] The special committee, appointed on August 11, consisted of nine members: Count Ito-Miyoji, Viscount Kaneko-Kentaro, Baron Yamakawa-Kentaro, Baron Kubota-Yuzuru, Mr. Arai-Kentaro, Mr. Midzumachi-Kesaroku, General Kawai-Misao, Baron Den-Kenjiro, and Marquis Kuroda-Chosei. The committee appeared to be chosen chiefly from members of the Council opposed to the foreign policy of the cabinet. General surprise was occasioned by the omission of Viscount Ishii, a former minister of foreign affairs. Cf. *Tokyo Asahi Shimbun*, Aug. 12, 1930, p. 2.

[90] *Tokyo Asahi Shimbun*, Aug. 17, 18, and 19, 1930, p. 1. Cf. *Japan Weekly Chronicle* (Kobe), Aug. 21, 1930, p. 232.

[91] The special committee held meetings on August 18, 23, 26, 28; September 1, 3, 5, 8, 10, 12, 15, and 17. Full accounts of each meeting appeared in the press.

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the Government was enhanced by a general condemnation by the press for the delay caused by the Privy Council and a renewal of proposals for its reform or abolition.[92]

The attempt of the Privy Council to undertake the supervision of cabinet policy, as described in the preceding pages, naturally has forced the Emperor's highest advisory body more and more into the political arena. In recent years, privy councillors have favored the Seiyukai rather than the Minseito, the former party being more militaristic and imperialistic than their opponents, and thus finding support among the reactionary leaders of the Council. Antagonism between the Minseito and the reactionary group has developed into a political feud. The Minseito bitterly resent the fall of the Wakatsuki cabinet in 1927, while privy councillors complain of the impeachment resolutions passed in the fifty-third Diet. Indeed, we are told that when the Hamaguchi cabinet came into office in 1929 the new Minseito ministry was informed that an "understanding" would be retarded until the party made an apology to the Council for the *dangai-an* of 1927.[93]

The party out of power is ever tempted to provoke a conflict between the cabinet and the Council, while the party in office expects its adherents in the Council actively to promote the "understanding" between the ministers and the Council. There is evidence that Seiyukai leaders played a rôle in the Council's decision to overthrow the Wakatsuki ministry. On the other hand, testimony is not lacking of various Minseito intrigues.[94] But down to date, the Minseito has more cause than its opponents to complain of the Council. As a result, a movement is developing within this party for the adoption of a program of reform of the Council.

[92] *Tokyo Asahi Shimbun*, Oct. 2 and 3, 1930, p. 7; *Osaka Mainichi Shimbun*, Oct. 3, 1930, p. 5. Compare *Japan Advertiser* (Tokyo), Oct. 4, 1930, p. 7; *Japan Weekly Chronicle* (Kobe), Oct. 9 and 16, 1930, pp. 423, 558.

[93] Cf. *Jiji Shimpo* (Tokyo), Aug. 9, 1929, p. 7.

[94] For instance, the statement is made that it was Egi-Yoku, a leader of the Minseito, who first called the attention of Count Ito-Miyoji to the phrase "in the names of their respective peoples" in the Kellogg Peace Pact. Cf. *Tokyo Asahi Shimbun*, April 19, 1929, p. 6.

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X. THE PERSONNEL OF THE COUNCIL

The liberal press in Japan paints a somewhat lurid picture of the Privy Council as an irresponsible group of superannuated, conservative, clannish, bureaucratic, militaristic, embittered old men. While this picture is an exaggeration, it is true that the personnel of the Council tends toward reaction. In the first place, most of the new appointees to the Council are officials who have reached or surpassed the retiring age in their respective services. As a result, the Council is composed of very old men, the average at present being seventy-three years.[95] Its membership of twenty-four includes four army and navy officers and at least fourteen bureaucrats.[96] There are a dozen ex-members of the House of Peers, and only a few who have served in the lower House. Only seven of the councillors have actually held cabinet posts, and none have held the premiership.[97] Four members are former university presidents, and three university professors *emeriti*.[98] One of the latter group is an ultra-conservative professor of law, and the others are from the departments of physics and chemistry—represen-

[95] The ages of the councillors are as follows: Kuratomi, 78; Hiranuma, 66; Ito, 74; Kuki, 79; Kaneko, 78; Kubota, 84; Tomii, 73; Ishiguro, 86; Yamakawa, 77; Kuroda, 64; Furuichi, 77; Matsumura, 80; Egi, 82; Sakurai, 72; Den, 53; Arai, 68; Kawai, 67; Ishiwara, 67; Kamada, 73; Suzuki, 66; Ishii, 65; Midzumachi, 68; Okada, 67; Fukuda, 66. Compare *Japan Year Book* (Tokyo, 1931), Appendix A.

[96] The militarists are Viscount Ishiguro (surgeon-general, retired in 1890), General Kawai-Misao (retired in 1927), Admiral Suzuki-Kantaro (retired in 1929), and General Fukuda-Masataro (retired in 1930). General Fukuda, who was appointed to the Council in 1930, was commander of the Tokyo garrison at the time of the earthquake in 1923 and was relieved of his command for laxity in regard to the massacre of Koreans and socialists, including the murder of Osugi-Sakae and his wife and nephew while in prison by Captain Amakasu. The bureaucrats include: Kuratomi, Hiranuma, Ito, Kaneko, Kuki, Kubota, Furuichi, Matsumuro, Egi, Den, Ishiwara, Midzumachi, Kamada, and Okada.

[97] The seven councillors who have held cabinet posts are: Ito, Kaneko, Den, Egi, Arai, Ishii, and Okada.

[98] The ex-presidents of universities are Kamada and Okada. The retired university professors are Tomii, Yamakawa, and Sakurai. Speaking strictly, Baron Yamakawa (*emeritus* professor of physics) should be included among the university ex-presidents, since he served as president of the Imperial University of Tokyo from 1913 to 1914, although during most of his academic career he was a physics teacher.

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tatives of a body of scientists who can claim no special fitness for political office. The universities of Japan today include many progressive and scientific teachers of law, political science, economics, and sociology; but no representatives of the new school of social scientists are found in the Council.

It must be admitted that many eminent university professors of law have served on the Council. Baron Hozumi, who was called to the presidency of the Council in 1924, at one time had been a leading authority on Japanese civil law. Baron Tomii, who has served on the Council since 1926, was a distinguished professor of administrative law in the Imperial University of Tokyo. But almost invariably the appointees have been men of ultra-conservative opinions—men who precede the celebrated constitutional controversy of 1913 between Minobe and Uyesugi and the founding of the new school of jurisprudence.[99] In legalistic attainments, they have often overborne the young councillors in the foreign and interior offices who were their former pupils in the universities. But they are men who belong to the past rather than the present.

The four retired military officers naturally watch the interests of the army and navy; they played conspicuous parts in opposition to the ratification of the London Naval Treaty, and they have backed the policy of military intervention in China and Siberia.

Two among the oldest members of the Council merit special regard. In one respect, the appointment of Count Ito-Miyoji in 1899 and of Viscount Kaneko in 1906 was ideal, for both of these statesmen had a part in the drafting of the constitution.[100] For many years, Ito-Miyoji and Kaneko have sat in

[99] Dr. Ichiki-Kitokuro, a former university professor and a councillor from 1917 to 1925, may be considered as the one exception in recent years. Dr. Ichiki studied in Germany in 1890-93, and became professor of administrative law in the Imperial University of Tokyo in 1894. In 1900, he became a member of the House of Peers, in 1908 vice-minister of home affairs, and in 1912-13 served as chief of bureau of legislation. He was successively minister of education and of home affairs in the second cabinet of Okuma (1914-16). Since 1925, he has been minister of the imperial household.

[100] In 1884, the *Seido Torishirabe Kyoku,* or Bureau for the Investigation of

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the Council and have asserted a peculiar authority as interpreters of this document. Their interpretations have tended to a strict and meticulous application of the constitutional language. Moreover, they have headed the most reactionary and militaristic group in the Council and participated in almost every decision which has extended the supervisory powers of the Council and obstructed parliamentary progress.

Several years ago an experiment was instituted to reduce the political activity of the Council by the appointment to the presidency of a scholar who had had no political experience.[101] Accordingly, in 1924 the Kato ministry secured the appointment of Baron Hozumi, the distinguished ex-dean of the law faculty of the Imperial University of Tokyo. The experiment was a failure, for Baron Hozumi proved a willing tool of the reactionaries. Upon his death in 1926, the defects of an inexperienced president being apparent, the Wakatsuki ministry moved for the appointment of Dr. Ichiki, the imperial household minister; but Prince Saionji refused to sanction it, on the ground that a man of his sagacity was required in the small group of high officials who surround the Emperor; whereupon the ministry contented themselves with the appointment of the then vice-president, Baron Kuratomi.

It is possible, of course, to change the personnel of the Council over a period of years by the appointment of new councillors. But in view of the fact that the cabinet is expected to

Constitutions, was set up under the Imperial Household Department with Prince Ito as chief. The technical work of the bureau was in the hands of three officials—one a classical scholar, one a student with a European education, and the third a bureaucrat—namely, Inouye-Ki, Kaneko-Kentaro, and Ito-Miyoji. Prince Ito's hand guided the whole process of constitution-drafting, but in particular, Ito-Miyoji was concerned with the Law of the Houses, Kaneko with the Election Law, and Inouye with the *Commentaries.* Ito-Hirobumi, "History of the Establishment of the Imperial Constitution," in *Kaikoku Gojunenshi,* or "Fifty Years of New Japan," (Tokyo, 1907), Vol. I, pp. 129-130. In the English translation (London, 1909), see Vol. I, pp. 127-128. Compare article by Kaneko in *Taiyo,* Mar. 8, 1909, pp. 127-128.

[101] Compare Baba-Tsunego, "Personalities of the Privy Council," *Kaizo* (Oct., 1930), Vol. XII, no. 10, pp. 27-34; and his "Elder Statesmen and the Privy Council," *Taiyo* (Nov., 1927), Vol. XXXIII, no. 13, p. 95.

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collaborate with the imperial household minister and the councillors themselves in the matter of appointment, the Government finds itself somewhat circumscribed in its selections. Moreover, the cabinet confronts a thorny problem of policy. If active and able men are raised to the Council, the tendency to expand its powers is thereby increased; if only retired officials are appointed, the reactionary influences are reënforced.

In concluding the subject of the personnel of the Council, it should be observed that the outstanding statesmen of today, corresponding to Ito, Okuma, Yamagata, and Saionji in the past, no longer sit in the Council. If found at all, they are in the ministry and the lower house; but this does not mean that the Council does not today contain men of distinguished ability.

XI. REFORM OF THE PRIVY COUNCIL

Proposals for the reform of the Council may be classified as follows: (1) reform of membership, (2) reform of procedure, (3) restriction of powers by imperial ordinance, (4) resistance by the ministry, and (5) abolition.

The first of these methods offers a possible solution for rendering the Council amenable to the cabinet. Under this head are included proposals that: (1) the membership be reduced from 24 to 15, (2) councillors be retired at a certain age, and (3) salaries be abolished.[102] It is clear that a reduction in membership would give the cabinet a better opportunity to vote down objection to its policies within the Council, all the more so if the salaries of councillors were abolished and they took their office less seriously. On the other hand, it is difficult to see how the appointment of younger or more representative men would improve the relations of the cabinet and the Council, unless there existed a method whereby the cabinet might "pack" the Council in the manner that a British premier can overcome an obstreperous House of Lords.

Reform of procedure has been proposed within the Privy

[102] Compare a symposium on reform of the Council in the *Tokyo Asahi Shimbun*, Oct. 13, 14, 15, and 16, 1930, p. 2.

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Council itself. The latest occasion was last October, immediately following the humiliating attempt to impede ratification of the London Naval Treaty. The initial move came from Dr. Okada-Ryohei, one of the younger and more liberal councillors. Two defects were emphasized, first the incongruity of the present procedure whereby the president makes a preliminary examination of every measure before it is submitted to the study of the councillors, and second, the usage whereby the councillors who are not members of the special committees of inquiry are kept in the dark until the report is made in plenary session. Dr. Okada proposed that the regulations should be revised to provide: (1) that the first reading of a measure be held as soon as referred to the Council, (2) that after the Council has heard the Government's explanation of the measure, the president should decide whether it be referred to a special committee of inquiry or be examined by the chief secretary, and (3) that councillors other than members of the special committee be permitted to attend the committee sessions.

The proposals for reform met the resistance of the presiding officers of the Council and the most conservative members, on the ground that they were a veiled rebuke to the president and vice-president because of their tactics in regard to the London Treaty. Three informal meetings of councillors interested in reform were held after various plenary sessions of the Council.[103] At a third conference, which met on October 15, eleven members being present, it was decided to abandon the proposals to revise the regulations, on the ground that to do so would require revision of the imperial ordinance of 1888; but it was agreed that the usage of the Council ought to be modified in order to insure that a draft of every measure should be distributed among all the councillors as soon as referred to the Council, and that all the councillors should be

[103] Full accounts of the informal conferences were published in the *Tokyo Asahi Shimbun* (evening ed.), Oct. 9, 1930, p. 1; Oct. 11, p. 2; Oct. 16 and Oct. 30, 1930, p. 1; *Jiji Shimpo* (Tokyo), Oct. 9, 1930, p. 1; *Osaka Mainichi Shimbun*, Oct. 10, 1930, p. 1. Compare *Japan Daily Advertiser* (Tokyo), Oct. 16, 1930, p. 1; *Japan Weekly Chronicle* (Kobe), Oct. 16 and 23, 1930, pp. 458, 485.

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privileged to attend the sessions of a special committee.[104] These proposals, simple as they were, never had the hearty support of a majority of the Council, and the objections of Kuratomi, Hiranuma, Ito, and Kaneko buried the project of reform.[105]

The third group of proposals concerns the restriction of the powers of the Privy Council by means of an amendment to the imperial ordinance of 1888. These proposals, in general, aim at removing the tendency of the Privy Council to supervise the cabinet, subduing its political activity, and ultimately relegating it to the status of an honorary institution with some duties connected with the imperial household. Nagai-Ryutaro goes so far as to urge that the Council even now be shorn of all powers save those in connection with the imperial house-

[104] At the conference of October 8, Baron Tomii was appointed chairman. The following councillors appear to have been present: Tomii, Ishiguro, Furuichi, Okada, Ishii, Sakurai, Kamada, Kuroda, Arai, Matsumuro, Mizumachi, and Fukuda. The following day, the secretary-general called at the residence of Count Ito-Miyoji in regard to Dr. Okada's proposal. It was reported that Count Ito entered vigorous objection, stating that the proposal was nothing less than an expression of want of confidence in the leaders of the Council, and that the Council, unlike the Imperial Diet, was not used to tearing up tradition. Cf. *Tokyo Asahi Shimbun*, Oct. 10, 1930, p. 1. At the unofficial meeting of October 10, attended by eight councillors, Ishiguro, Matsumuro, and Furuichi protested against the adoption of reforms at a time when the Council was held in ill repute. Okada and others replied that this fact made the reforms all the more opportune. After the conference of October 15, which adopted two of the proposals of Dr. Okada, Baron Tomii reported the views of the conference to the president and vice-president. A few days later, it was stated in the press that Baron Kuratomi would take no action, on the ground that no change in rules was needed, inasmuch as a distribution of the referred measures could be made to the councillors at any time that there was a request for the same, while there was no assurance that councillors not members of special committees would attend the sessions of the committee after the privilege was extended to them. Cf. *Tokyo Asahi Shimbun*, Oct. 22, 1930, p. 3.

[105] It was reported in the press that after the plenary session and an audience with the Emperor on October 29, Kuratomi, Hiranuma, Kaneko, and the Secretary-General held a conference on Okada's proposals and came to the conclusion that, since all the steps taken had been informal, the president was not required to act other than to keep the question under advisement. Cf. *Tokyo Asahi Shimbun* (evening ed.), Oct. 30, 1930, p. 1. Finally, after the plenary session of November 5, Dr. Okada left the Council office without raising the question of reform. Cf. *Tokyo Asahi Shimbun*, Nov. 6, 1930, p. 1.

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hold.[106] He would leave decisions upon administrative rules, ordinances, and ratification of treaties entirely in the hands of the cabinet; even the Council's power of interpretation of the constitution should go; if the ministry should overstep its authority, the House of Representatives will be the judge. On the other hand, Professor Royama, while proposing that the decision upon ordinances be left to the cabinet, and the ratification of treaties to the House of Representatives, would retain the Council as an interpreter of the constitution and an organ of the imperial household.[107] Limitation of the Council's powers also has the weighty support of Dr. Minobe, the distinguished professor of constitutional law on the faculty of law of the Imperial University of Tokyo. As a defender of the theory of parliamentary government, he recognizes little justification for its continued existence, save as an honorary body.[108]

Another group of proposals center upon stiffening the backbone of the cabinet when in conflict with the Council. This method of curbing the Council has the advocacy of Ozaki-Yukio, whose uninterrupted service in the House of Representatives since the first session in 1890 gives him a unique reputation as a political oracle. In a notable speech in the 53rd session of the Diet, he chided the members of the Wakatsuki ministry for their supineness in resigning when the Council refused to approve their project of an emergency imperial ordinance. The proper procedure would have been that of petitioning the Emperor for the dismissal of the stubborn

[106] "Reform of the Privy Council," *Chuo Koron*, No. 473 (June, 1927), pp. 55-63. Dr. Nagai was formerly professor of politics in Waseda University. For several years, he has represented Ishikawa-ken in the House of Representatives. He belongs to the Minseito, and served as parliamentary counsellor to the Foreign Office in the Wakatsuki ministry (1926-27), and as parliamentary vice-minister of foreign affairs in the Hamaguchi ministry (1929-31).

[107] Royama-Masamichi is professor of the science of administration on the faculty of law in the Imperial University of Tokyo.

[108] *Gendai Kensei Hyoron* (Tokyo, 1930), pp. 126-128. This compilation contains his articles on "The Privy Council" appearing in the *Kokka Gakkai Zasshi* (1925), Vol. XXXIX, pp. 391-410, 752-769; (1927), Vol. XLI, pp. 1357-1390.

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councillors. Should the Emperor refuse the petition, the ministers, of course, must resign; but until their appeal to the Throne is rejected, they should remain at their posts.[109] This view has the support of such publicists as Dr. Yoshino-Sakuzo.[110] Moreover, it has one precedent in its support; for we are told that when, in 1913, the Council opposed the proposal of the Yamamoto cabinet to extend the list of army and navy officers eligible for the war and navy portfolios and to amend one of the civil service ordinances of 1893, a threat by the premier to recommend dismissal of obstreperous councillors by the Emperor broke down the opposition. But the adoption of the practice is opposed by many able constitutional lawyers, like Minobe, who hold that such procedure is a violation of the spirit of the constitutional system as at present organized.[111]

Complete abolition of the Privy Council is frequently demanded with rhetorical flourishes in the liberal press and in the speeches of the younger members of the Minseito.[112] The leaders of the labor parties also demand its extinction.[113] Clever critics are fond of referring to the Council as a third house, a nuisance to parliamentary government, a vantage point from which disappointed and superannuated politicians may vent their spleen on their enemies. But even here, on second thought, there is a disposition to tolerate the institution as a means of reward for distinguished services to the state and as an organ of the imperial household.[114] While sym-

[109] *Kwampo gogai*, March 8, 1927, pp. 69-70.

[110] "Reform of the Privy Council," *Chuo Koron* (June, 1927), No. 473, pp. 103-117. For an English translation, see *Japan Weekly Chronicle* (Kobe), June 2, 1927, pp. 596-597. Compare Baba-Tsunego, "Personalities in the Privy Council," *Kaizo* (Oct., 1930), Vol. XII, no. 10, p. 34; Sasaki-Soichi, "Reform of the Privy Council," *Tokyo Asahi Shimbun*, Oct. 16, 1930, p. 2.

[111] *Kempo Seigi* (1928), p. 564.

[112] For a manifesto of a group of the Minseito adopted at the party's headquarters in Tokyo on June 25, 1928, see *Tokyo Asahi Shimbun*, June 26, 1928, p. 3.

[113] Compare the statement of Katayama-Tetsu, one of the leaders of the Shakai Minshūto. *Tokyo Asahi Shimbun*, Oct. 13, 1930, p. 2.

[114] Compare the following editorial from the *Jiji Shimpo* (Tokyo), Oct. 16, 1930, p. 3. "There is no room for a body like the Privy Council in a parliamentary system. As soon as party government was established, the Privy Council lost its reason

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pathetic toward the movement for reform of the Privy Council, perhaps the majority of critics will hold with Professor Moriguchi that abolition of the Council is unjustified until such time as the House of Representatives more accurately reflects the opinion of the electorate.[115]

What of the future? Although the constitution of Japan was framed with a definite design of avoiding democratic rule and ministerial responsibility to an elected parliament, many of the barriers to parliamentary progress have been lowered during the past forty years. The Privy Council is one of the remaining obstacles in the way of this constitutional development. Granted that the progress of parliamentary government will continue, the future of the Council as an institution will depend largely upon the degree with which councillors adapt themselves to the new conditions. A continuance of the present tendency toward supervision of the ministry invites reconstruction and curtailment of powers, if not abolition.

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for existence. If the Privy Council has continued with its powers unimpaired, it is because there has been no government strong enough to curb it. The Council ought to have been reformed, if not abolished, when it began to cause the downfall of cabinets. Should the Council continue to obstruct the Government as it did in the matter of the London Naval Treaty, it is safe to say that public opinion will soon force its abolition. There is only one way for the Council to save itself. That is to refrain from interfering in politics. If the privy councillors realize that the Council as now functioning is an institution incompatible with parliamentary government, all will be well. For the people will not destroy a harmless institution.''

[115] Moriguchi-Shigeji, *Kensei no Genri to sono Unyo*, or ''Principles and Practice of Constitutional Government,'' (Tokyo, 1929). Dr. Moriguchi is professor of comparative constitutional law in the Imperial University of Kyoto.

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THE POLITICAL OUTLOOK IN THE UNITED STATES

A SYMPOSIUM

The Prospects for a New Political Alignment.[1] Although a naïve economist, I am quite conscious of the way in which the forces of inertia, self-interest, and sentiment combine to give persistent vitality to those two old parties which, so far as ideas are concerned, are so perfect an example of the embalmer's art. Not only do these parties have the network of precinct and local organization upon which effective political work must rest, but they also furnish to ambitious men and women the sole avenues to immediate political power. Perhaps most important of all is the fact that their trade-marks and totemistic deities tap large wellsprings of genuine, if benighted, sentiment in the hearts of millions of humble and undistinguished men and women. To the farmers of the Middle West, the Republican party is still a glorious fellowship of the consecrated Knights of the Grail, who, in times past, prevented slavery from creeping up the Mississippi Valley, gave homesteads to the people, fought the Civil War, and bequeathed Abraham Lincoln to the ages. Similarly, nostalgic Southerners regard the Democratic party as an integral part in that vista of the glorious days before the Civil War when cotton was king and their statesmen dominated Capitol Hill, and also as the corporate representative of that chivalrous group of men in white armor who finally overthrew carpet-bag government and negro domination, and who by their efforts finally made Southern Caucasian civilization free at last.

Such being the assets of the old parties as going concerns, it is not surprising that progressively minded leaders like Senators Norris and Borah should wish to stay inside the party breastworks and utilize the accumulated resources of organization and sentiment for their own purposes, rather than to surrender the good-will value of the party label to their opponents.

And yet, despite all this, it seems—to me, at least—that the existing alignment of parties and of party policy is fundamentally inconsistent with those fundamental economic alignments which furnish the taproots from which both parties and political sentiment must ultimately

[1] An address before the American Political Science Association, December 30, 1930.

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spring. Very briefly, the thesis which I wish to defend is that both the Republican and Democratic parties are now primarily business parties, operating consciously or unconsciously through their policies and ideas to protect the interests of the owners of industrial and commercial capital, and that they do not represent the interests of the two most economically important classes in the community, namely, the urban and town wage-workers and the farmers.

Economically, the face of America has been changed in the last seventy years from a nation of self-employed workers, who, whether as artisans, farmers, or merchants, were independent in their working life, to a nation of employees. This happened long ago in the fields of transportation, mining, and manufacturing, where the tendency is still markedly in the direction of ever-increasing concentration of employment. The chief remaining classes to preserve the old independence were the small merchants and the farmers, and upon this economic basis the equalitarian democracy of the Middle West largely rested. But the chain store is rapidly driving out the storekeeper and replacing him with the hired clerk and manager. Even more important is the revolution which the gas engine, manifesting itself in the tractor and combine, is effecting in agriculture. The old 160 acre farm will, in many sections have to give way to the 320 or 480, or even 640, acre farm which alone can afford the new machinery; and even the wheat farms of 500 to 800 acres will probably give way to the 2,000, the 4,000, or the 5,000, acre farm. The result of this change will be not only a still further diminution in the relative numbers of workers needed to feed the nation—and hence a further increase in the number of urban employees—but also a profound change in the composition of the agricultural population itself. Instead of most agriculturists being proprietors, as is now the case, they will be primarily farm laborers, not owning land, but instead working for hire. I should not be surprised, for example, to see in the next forty years a change from the 1920 ratio of two farm owners (or members of their families) to one farm laborer, to a very different ratio of one farmer to three, five, or even eight, farm laborers.

But while these economic changes have been and are occurring, the legal philosophy and political policies of the country, in so far, at least, as they affect the workers, are based primarily on the days of handicraft. Our legislatures and our courts still proceed on the assumption that individuals can protect themselves against the risks

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of life, and that the inviolable freedom which is to be cherished above all others is the free right of free men to make free contracts. This is in part an inevitable result of the cultural lag which Professor Ogburn has so illuminatingly discussed. But to an even greater degree, this philosophy dominates our intellectual and political life, because the business classes have found it to be to their interest to foster it. For if I and my fellows possess the factories, the railways, the mines, we will naturally insist that those who can furnish only their hands or brains, and who have either very slender resources or none at all, should be left free to accept or reject work on the terms we offer. Having the resources, we can wait; they, not having the resources, are much more hampered. The policy of laissez-faire in labor matters is therefore the inevitable political philosophy of the possessing classes, since if the state will only keep its hands off, the sheer pressure of economic power will force the applicants to terms. And if the latter grow unruly about the blessings of the system of free enterprise, the state can then enter the field with police and militia and by force restore the system of free contracts. It is a small wonder, therefore, that the possessing classes are opposed to state interference, and that they are emotionally attached to that majestic equality of the laws which, as Anatole France once observed, "prevent the rich as well as the poor from sleeping under bridges and begging on the streets for bread."

But while this philosophy is very appealing in editorial and directors' rooms, in university clubs, and judicial chambers, it is not appealing to that ever-increasing proportion of the population who work for wages. They know that, being necessitous, they are not free. They would willingly give some of their vaunted freedom to sell their labor cheaply in return for protection by the state. Most of all, they want security against the severe menaces of unemployment, ill-health, and old age, and will increasingly demand a system of compulsory social insurance which will provide it.

Nor, I take it, will the American wage-earners permanently content themselves with their present unorganized condition. Sometime, sooner or later, the great mass-production industries of iron and steel, textiles, chemicals, and automobiles will probably be faced with a labor movement which welfare capitalism will find it difficult to avert. When this organization starts, the workers will find that if the local, state, and national governments are in the hands of their opponents, their

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own efforts will tend to be defeated by the pressure which the state can and will tend to exert against them through the local and state police, by the legalization of the yellow-dog contract (backed up by injunctions to keep off organizers), and by rigid restrictions upon boycotting and picketing. In such a situation, they will naturally turn to political action, in order to remove the hostility of the state, as well as to obtain that degree of social insurance and protection which even unions cannot ordinarily obtain. The employed classes whose working lives have been socialized by industry, and the corporations, will then come to regard the state as a social agency which is to be used for their benefit. As soon as this notion becomes at all widespread and articulate, a political realignment will necessarily follow.

The second great group whose fundamental interests are violated by the present political set-up are the farmers of the Mississippi Valley, whose prosperity rests upon the trinity of wheat, corn, and cotton. These groups are greatly injured by the present protective tariff system, which, while throwing some aid to wool and to beet sugar, primarily benefits the manufacturers of textiles, steel, chemicals, glass, etc. These tariffs tend, on the whole, to raise prices, to encourage high-cost domestic producers to enter the field, and to increase the profits of the more efficient plants. The tariff therefore increases the prices of the clothing, blankets, linen, furniture, farm machinery, and fertilizer which the farmer buys. But it does more. By preventing Europe from selling as large a quantity of textiles, chemicals, etc., to us as it otherwise would, the tariff prevents Europe from buying as large a quantity of our wheat, our lard, and pork (which is manufactured corn), and our cotton as it otherwise would. These agricultural products are therefore thrown back upon the home market, and since they are characterized by an inelastic demand, the result is a more than commensurate reduction in price per unit. The result is that the total price realized by the farmers from the domestic market alone is less than what it would be under a system of free trade, to say nothing of the great added loss experienced on the foreign market. The farmers of the Mississippi Basin, therefore, suffer doubly from the protective tariff, since it at once compels them to pay more for what they buy and to receive less for what they sell. The tariff is a fundamental contribution to that disparity between agricultural and urban income which is the most conspicuous element in the "farm problem."

Nor do I expect the farmers to receive any permanent relief from

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a policy of export dumping, whether explicitly ordered by legislation of the McNary-Haugen or export-debenture type or quietly carried out by the administrative orders of the Federal Farm Board. Such a policy would, to be sure, bring a temporary gain, because the higher total price realized from the smaller quantity sold at home would more than counterbalance the losses on the increased quantity sold abroad. But ultimately such a policy of dumping would still further increase the agricultural tariffs of Europe and promote the movement for the economic federation of the British Empire, with its attendant limitations upon the importation of raw products from outside the Empire. The throwing back of these products upon the United States, when combined with the initial increase in acreage and output which would surely follow, would, in my opinion, probably eliminate all the temporary gains, and possibly result in a still further degradation of American farm life.

The true road to farm relief lies, therefore, in an appreciable reduction in the tariff on manufactured goods. This would lower the prices of the goods the farmer buys and, by increasing European purchases, raise the prices of the products which he sells. The value of farm products would rise because of this double movement, and the present disparity between urban and rural living standards would in part be redressed.

Unless the Middle-Western farmers are as stupid as the East believes them to be, and which, as an adopted son of the Middle Border, I do not want to believe, they will ultimately work for a reduction in the tariff. We have here, therefore, a clear basis for the alliance between the urban workers and the farmers. Stated in its simplest terms, the only way in which the former can get social legislation on any extensive scale, and in which the latter can obtain tariff reform, is for each to support the other's program in return for support for their own. But this is not the sole basis for such an alliance, since there are at least four further policies on which their interests are in complete harmony. These are:

1. An increasing use of income and inheritance taxes by the federal government and by the states for the purpose of supporting increased social services such as education, health, and recreation for all the people. It is obvious how this would help the under-privileged families of urban workers; but it would also be of great aid to the farmers themselves. For such a program would furnish them with far better facili-

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ties in these directions than they would themselves afford; while, at the same time, the state would assume a large part of the financial burden which education now imposes through the general property tax upon the hard-pressed farmers.

2. The stricter regulation of the rates and capital structures of the utility companies and the establishment of public super-power systems on the Ontario model. There can be no doubt that, in general, the state public service commissions have virtually lost control over the electrical and gas companies, and in all too many instances have been in effect controlled by the very utilities which they are supposed to regulate. *If* prudent investment could be made the basis for valuation; *if* the utilities could be restrained from adding large surpluses, supposedly accumulated for depreciation, but wrung, of course, from earnings, to their capital account; *if* the rate of return were limited to the actual competitive cost of obtaining capital, then the average of utility rates could, beyond doubt, be reduced, and at the same time a readjustment of rates between domestic, commercial, and industrial users of power would bring still further relief to the main body of consumers. At the same time, the vigorous development under public ownership of such projects as the Niagara power pool for upper New York, Muscle Shoals, Boulder Dam, and many other strategic possibilities should not only furnish power more cheaply to the immediate consumer, but also provide a measuring stick for private utility rates everywhere. These lower rates would, of course, lead to a very appreciable increase in the amount of power used in homes. Electric washing-machines, toasters, flat-irons, etc., would inevitably become more common, and a great burden would be lifted from those forgotten persons who lie at the base of our civilization, namely, the wives of farmers and urban workers.

3. The present break-down of production all over the capitalistic world has inevitably suggested the possibility of so planning and controlling our economy as to avoid gluts and so-called "over-production" and keep our industrial mechanism in a more perfect state of balance. This problem of a planned economy bids fair to be one of the outstanding economic and political issues of the present century, and no two classes have a greater interest in its solution than the farmers and workers.

4. Finally, just because the farmers and workers must pay the major portion of the human costs of war, these two groups are at

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one in their interest in a world of peace. Once organized, they can be trusted to oppose with hard realism the sentimental fallacies which the militarists and professional diplomats weave around the concepts of glory and prestige.

There would seem, therefore, to be a thoroughly sound basis for such a farmer-labor alliance, which might well be joined by a section of the middle-class professionals and intellectuals.

Many readers will admit all this, but nevertheless believe that one of the two old parties can become the chosen vehicle for this new movement. Let us see. It will not be denied that changes such as I have proposed will be fought bitterly by the owners of manufacturing, transportation, mining, public utilities, and banking. Such a program would lower the prices of some products, increase the outlay for labor, diminish profits, and leave the owners much less powerful than they now are. In order to defend both their power and their profits, the interests would naturally oppose the movement with all their might. Such being the case, is it not idle to expect the Republican party to become the national agency for any such program or movement? It is, with rare exceptions, openly the party of the business interests. If, indeed, one studies its composition, one finds it, in general, to be directed by a powerful fusion of high finance, corrupt machines such as those of Philadelphia and Chicago, and slippery politicians of the Ohio-Indiana model. Here and there, to be sure, a Pinchot and a Norris may struggle bravely for such a program as has been proposed. But the experience of the last election has shown that when this happens, the Republican organization will, at the order of those behind them, support the Democrats. Thus the Vare machine, and General Atterbury, president of the Pennsylvania Railroad, supported the Democratic candidate for governor in preference to Gifford Pinchot, who had pledged himself to try to reduce public utility rates; while we have learned of the surreptitious efforts of the chairman of the executive committee of the Republican national organization to defeat Senator Norris in Nebraska and to elect a Democrat in his stead. While the progressive group within the Republican party may be able to capture a few states, it would seem impossible for them to capture the national party itself.

Nor, in my opinion, is the Democratic party much more likely to become the agency for such a movement. For it is fundamentally composed of conservative Southern elements, now strongly tinged with

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industrialism, and the corrupt political machines of Boston, New York, and Chicago. The leaders in this party are, moreover, anxious to win the favor of big business. This was evidenced not only by the behavior of the party in Pennsylvania and Nebraska to which I have referred, but of course strikingly so by their national abandonment in 1928 of their historic low-tariff policy and by their adoption of protection. Governor Smith, in his Louisville speech, stated with all the force at his command that the Democratic party is now committed to a high tariff policy. Similarly, the later widely-advertised pledge of seven Democratic leaders that they could be depended upon not to hurt business was but an outward sign of a deep-seated inner tendency.

I should like to submit, therefore, that when this new movement begins to gather real headway, it will probably be driven to form, on a national scale, a new party. To this party will attach themselves sections of the present Republican party such as those represented by Senators Norris, LaFollette, Borah, and Governor Pinchot, and also sections of the Democratic party such as those now represented by Governor Franklin Roosevelt, Senator Wheeler, and Governor Wilbur Cross. Such an actual party has come into being in one state —Minnesota—where, despite lax party discipline, the governor, lieutenant-governor, and a United States senator are all representatives of the Farmer-Labor party, and where the party has recently elected its candidate as mayor of Minneapolis. In Oregon, moreover, an independent candidate for the governorship has been elected on a public utility program very similar to that which I have outlined. There are already nuclei for such a movement in a number of other states.

This analysis may seem to some people to be dominated by a will-to-believe, rather than by the realities of the situation. I would not have you think that I am unaware of the enormous obstacles which lie in the way of the successful functioning of any such party. It will take time, and perhaps a great span of years, before such a political realignment takes place. For, in addition to the fact that the older parties have the organization, the press, finances, and powerful wells of sentiment, there are many other barriers as well, of which the following are, perhaps, the most important: (1) the ability of the Supreme Court to render political action nugatory by declaring acts unconstitutional will discourage large groups of voters from the hope of ever changing anything fundamental by political action; (2) the issues

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of prohibition will unfortunately tend to divide the farmers and urban workers as well as the two old parties, and will retard the realignment along economic and social lines; (3) the relative lack of interest of the skilled American Federation of Labor unions in the organization of the unskilled and semi-skilled will hold back the organization of the latter classes, and consequently delay their participation in politics; (4) the relative importance of the states will for long throw the chief emphasis for progressivism upon state movements; (5) the existence of the direct primary will intrigue large numbers with the idea that they can capture the old parties; (6) the independent election of the executive and the fear of throwing away one's vote will initially restrain many timid liberals from supporting such a new grouping, lest, in doing so, they aid the party they like least to come into power.

But potent as these obstacles are, if my analysis of economic tendencies is correct, a political re-grouping should follow some time within the next quarter or half century which will express the solid, but hitherto relatively inarticulate, interests of the Middle-Western farmers and the fast swelling ranks of urban and town workers. Such a re-grouping will be necessary, not only to accomplish the ends which I have mentioned, but in order to prevent progressives from cancelling their votes on a national scale, to permit them to control their leaders, and to arouse that popular enthusiasm which a mere program of "boring from within" is helpless to invoke. After all, a half-century is but a short period in the life of a nation, even though a long period in the life of a man. And to those who doubt whether or not my analysis is correct, I am willing to leave the issue to the arbitrament of time, and to invite the political scientists of 1981 to correct my prophecies of 1931.

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Trench Warfare. Professional students of American politics, like other members of the governed classes, have their private reasons for discontent with the present administration at Washington. The business depression, to be sure, has not injured the educational interests of the country to the same extent as most others. Decreased income from tuition and endowments has reduced somewhat the demand for young Ph.D.'s in colleges and universities, and the Ameri-

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can Association of University Professors has received an extraordinary number of calls for help from older teachers who have been laid off for more or less obscure reasons on the plea of lack of funds. But in general, education seems to be one of the public services for which the public will not readily reduce its effective demand. Boys and girls continue to grow up in bad times as in good, and the increasing difficulty of finding remunerative employment only stimulates the desire for further education. Professorial salaries, once fixed, are not easily reduced, and the fall in the general level of prices leaves most professors better off than before. Hence the private reasons of professors of political science for discontent with the present administration, though no less exigent than those of other members of the governed classes, are of a peculiar nature.

In the first place, the present administration has not fulfilled the high hopes of many political scientists for improvement in the methods of legislation at the national capital. It was hoped, for example, that the executive would take a vigorous initiative in recommending measures to the Congress and would make greater use of technical experts in the preparation of administration measures. The previous record of the chief executive in the Food Administration and in the Department of Commerce seemed to justify these hopes. But they were destroyed by the Hawley-Smoot-Grundy tariff. Twenty years had elapsed since the first effort by the Taft administration to take the tariff out of politics through the establishment of a tariff commission. Nevertheless, the Hawley-Smoot-Grundy tariff was made by the Congress in the same old way as before, and the Hoover administration made no effective effort to secure for its tariff experts a more influential part in the process of tariff-making.

There were two grounds for this failure. One was the inability of the administration to discover a principle of tariff-making under which the task of finding rates embodying the approved policy of protection could be delegated to an administrative agency. Even such a bare rule of reason as is established for the guidance of the Interstate Commerce Commission was lacking in the case of the Tariff Commission. The other was the unreliable character of the agency itself. The personnel of the Tariff Commission was not such as to warrant any reasonable expectation that the tariff could be taken out of politics by entrusting a larger share of the power of tariff-making to such a body. The revision of the tariff was the administration's best op-

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portunity to improve the legislative process. Its failure was particularly disappointing to professional students of government, since it is they, above all members of the governed classes, who attach the greatest importance to the processes of government.

A second cause for dissatisfaction with the present administration on the part of professional students of American politics is closely related to the first. The present administration has not brought about the hoped-for improvement in the administrative personnel. The most urgent need is for the employment of scientifically-trained men in administrative positions where a wide discretion must be exercised. This need is recognized in the army and navy, and to a lesser extent in the administration of justice. It is recognized also in appointments to positions in the services which utilize the natural scientists. No chief executive now ventures to man the responsible posts in the Geological Survey, the Bureau of Standards, or the Weather Bureau with lame-duck congressmen or unemployed campaign managers. But there is no such hesitation in filling the posts which should utilize the social scientists. During the World War, economists and sociologists and statisticians were found to be very useful in Washington and were employed in large numbers. They should be used also in times of peace. It is not only the Tariff Commission which suffers from the predominance of political considerations in the selection of its members. Why should such a body as the Court of Customs and Patent Appeals be treated as a place of refuge for retired congressmen? Why should not the most capable among the young economists and lawyers in the service of the Federal Trade Commission or the Federal Reserve Board be able to look forward to eventual appointments of high authority in those services? There can be no satisfactory utilization of technical experts in the business of government unless chief executives are willing to appoint the most competent technicians to all the posts which require technical competence.

Another ground of discontent, felt with peculiar intensity by professional students of politics, is the abuse of expert service when actually available. President Hoover has emphasized his desire always to act upon adequate information in the conduct of the executive branch of the government, and, partly to this end, has appointed an unprecedented number of investigating commissions. It is too soon to pass a final judgment upon this policy of the present administration. Necessarily, enough time must be allowed for its results to be-

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come manifest. But the signs are not auspicious. Outstanding among these investigating bodies is the Wickersham Commission. Its membership was admirable. Its reports were carefully prepared by competent technicians. Most of these reports have been released too recently for the administration to have shown what it can do with them. But the most interesting of them all—that upon the observance and enforcement of the Eighteenth Amendment—was treated with scant respect by the head of the administration, and, it is now clear, his example is likely to be followed by most others whom it might have concerned. This is greatly to be regretted, not only because the members of the commission had done a good deal of hard thinking, which might have been helpful to the administration, but also because the slighting of the report tends to discourage the future use of experts in similar investigations and to discredit the method itself as an administrative process. The very name of the Wickersham Commission threatens to become a by-word for political futility. To the governed classes in general, who are more concerned with the substance than with the forms of governmental action, the contumely and contempt with which the report has been treated is merely an emotional by-product of an otherwise barren incident. To the professional student of politics, it is a grievous casualty in the battle for more competent and less irresponsible government.

Other abuses of expert service require to be noted. There is the dismissal or resignation of experts on account of their refusal, as alleged, to countenance the public misrepresentation of technical findings. Recently the Secretary of Commerce has invited the president of the American Economic Association to investigate charges by economists formerly in the public service that they were pressed by their official superiors to alter their professional opinions on technical matters in a sense more favorable to the measures of the administration. Such charges, if shown to be well founded, would weigh heavily against the present administration in the minds of professional students of politics. Of similar import is the employment of governmental economists to assure the public that, whatever may be the state of the nation's business, there is nothing fundamentally wrong with the existing economic order. What would be thought of a weather forecaster who, observing the signs of an impending storm, should hasten to remind the public that our climate is fundamentally sound, or a weather bureau which should conceive its prime function to be the maintenance

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of public morale rather than the supply of reliable information to navigators and others concerning the nature and extent of areas of depression? No doubt there are psychological as well as strictly economic factors in a business depression, which psychologists (or politicians), but not economists, may properly deal with. But it would be as poor a service to the American public to use economists outside their proper sphere as to refuse to use them within it. It would also be a disservice to the economists themselves. The former aspect of the matter is the one of most immediate public concern; the latter, however, is that which touches most closely the professional student of politics. It threatens to create new and unnecessary obstacles to the wider utilization of experts in the business of government. And the wider use of experts in the business of government is an improvement which professional students of politics have very much at heart.

Professional students of government will be the first to admit that these grounds of discontent with the present administration are of a peculiar nature. The governed classes in general cannot be expected to take much interest in political issues which do not directly concern them, unless they carry an emotional appeal as well as (or in lieu of) an appeal to reason. These grounds of discontent concern directly only the special groups from which the experts may be drawn. They carry no strong emotional appeal to other members of the governed classes. They can play no important part in the next presidential campaign. They must be dismissed as influential factors in the alignment of political forces. Professional students of government, who wish to view the political scene in a scientific spirit, will put them out of mind. Whatever influence these private reasons for discontent may exert upon their own political behavior, they must not be allowed to disturb their professional calculations. The problem is, How may the next presidential election be expected to turn out, and, more particularly, May it be expected to turn out differently from the last? The essential elements in the solution of this problem are those grounds of discontent which are not peculiar to political scientists.

There is always, a year or more before the election, a widespread sentiment in favor of a change of administration. To say nothing of the partisans of the defeated candidate at the preceding election, there are those supporters of the victor who would have preferred the leader of a different faction in the party, or at least a man of a different type, or who have been disappointed in the conduct of the

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administration. Added to all these ordinary malcontents, there are now the victims of business depression. Their disaffection is not diminished by the recollection that an outstanding feature of the last campaign was the promise of continued prosperity by the eventual victor. If the business depression should remain through the next campaign, there could be no doubt about the outcome. Any candidate whom the hitherto dominant Republicans might nominate would be defeated by any Democrat who might be chosen to run against him. And of course it is possible that there will be no change for the better before November, 1932. But it is possible, indeed probable, that there will be by then, if not a definite change for the better, at least some sign of impending change. And no depressed follower of the party in power who has found a job by election day, or hopes to find one afterwards if the election does not go the wrong way, will turn against the Republican candidate. Discontented politicians may gamble, if they like, on the continuance of the present depression. But professional students of government will not do so, or, if they do, they will not bother to write articles about the prospects of the Republican party in 1932. The promise of a return to normal in business means a return to normal also in politics. Discontented Republicans are not ordinarily able to choose between the official party candidate and a candidate of their own selection. They are forced to choose between the official candidate and a candidate selected by the Democrats. It is not surprising that the discontent of a year or more before the election among the members of the dominant party ordinarily evaporates by election-day; in default of a continuance of business depression, it may be expected to do so this time.

A return to normal means a victory for the Republicans. Ever since the sound money campaign of 1896, there have been more Republicans than Democrats in this country. The Democrats cannot hope to win, if the Republicans do not quarrel among themselves as in 1912, except by finding an issue which will make a strong appeal to some powerful interest on the Republican side, or which can be so effectively dramatized as to arouse popular emotions regardless of party. The Democrats succeeded by the latter method in 1916 with their issue of "he kept us out of war," but such success is always unpredictable. It depends too much on circumstances beyond the control of politicians. The former method is more within the control of politicians, but it involves a substantial realignment of parties—

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the perennial hope of those philosophical souls who want more principle in their partisanship, but a rare feat in American politics.

Some political observers have thought that a party realignment was actually accomplished in 1928. They point to the fact that the "solid South" was more badly broken then than at any time since the withdrawal of federal troops from the southern states more than half a century ago. Virginia, North Carolina, Florida, and Texas, no one of which had been counted for a Republican presidential candidate since Reconstruction days, voted for Mr. Hoover, or rather against Mr. Smith, and only six states remained of the once solid South. On the other hand, Massachusetts and Rhode Island went Democratic, which neither of them had done before—except when the party was divided in 1912—since the foundation of the present Republican party. Besides Massachusetts and Rhode Island, Connecticut and New York, which since 1896 had been consistently Republican in national politics, returned a higher percentage of Democratic votes at the election of 1928 than the average in the country as a whole. The same was true in the Republican states of Wisconsin, North Dakota, and Utah. Temporary causes might explain the defection from the Republican party in the three western states, but the overturn in the four eastern states seemed clear evidence of a definitive shift of party allegiance among the city-dwellers of the North Atlantic seaboard.

Turning, however, from the presidential to the congressional elections, the evidence of a realignment of parties disappears. The Republican congressmen were distributed among the various sections of the country in 1928 much as in other years of extraordinary Republican success, and in 1930, when the Republicans held a bare majority of the seats, the Republican districts were substantially the same as on other occasions in recent years when the elections were close. The principal gains of the Democrats in the congressional elections of 1930 were in the sections of the country where the two major parties have long been most evenly matched, especially in the corn and winter wheat region of the Middle West. There was nothing in these congressional elections to suggest any permanent alteration in the distribution of party strength among the various sections of the country.

The conclusion is inescapable that the peculiarities of the 1928 election were the consequence chiefly of the peculiarities of the Democratic candidate for the presidency in that year. In sections of the country not yet accustomed to the idea of Catholics in high office, there

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was much "knifing" of the head of the Democratic ticket. In other sections of the country, where all kinds of voters have learned by experience that good Catholics can also be good Americans, the Democratic candidate was judged more generally on his character as a man and his record as a politician. But the religious issue was complicated by the liquor issue, and no political statistician can tell where the effects of the one stopped and those of the other began. If the Democratic party should decide to nominate none but Catholics for the presidency hereafter, doubtless there would be a substantial realignment of parties in national politics. But if the majority of the party choose as a rule members of their own religious faith for their standard-bearer, as seems probable, there is no reason to suppose that the campaign of 1928 will leave any permanent mark upon the American party alignment.

More debatable are the possible consequences of conflict between the "wets" and the "drys" in the Democratic party. It might be supposed that if the repeal of the Eighteenth Amendment were made the paramount issue of 1932, a realignment of parties would be brought about which would give the Democrats a better prospect of success in national politics. A vigorous demand for the repeal of the Eighteenth Amendment would meet with a rapturous response, not only from the bulk of the urban Democracy in all sections of the country outside the South, but also from numerous Republicans, disgusted with the uncompromising dryness of the present administration. A united party of the "wets" would doubtless carry most of the great industrial states, and perhaps, as the Association Against the Prohibition Amendment claims, enough of the others in the North and West to give a majority of the electoral college to the candidate of such a party. Under the new apportionment, based upon the census of 1930, 21 of the 27 seats in Congress which have been transferred from the slow-growing to the rapidly-growing states have been assigned to states in which the majority of the people live in cities, and in which the "wet" sentiment seems to be dominant. At least this number of seats has been lost by "dry" rural states. The 21 states which are classified as urban under the latest census possess a clear majority of the votes in the electoral college. Not all of them offer an equally promising field for the operations of a "wet" party, but the managers of such a party might hope to pick up enough electoral votes in other states to make up for losses in these. Even though such hopes proved

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excessive, the "wet" party, if it were the Democratic party, might expect to retain enough of the solid South to give a fair prospect of success at presidential elections. The fate of southern Democratic senators, like Heflin of Alabama and Simmons of North Carolina, who bolted their ticket in 1928 and paid for their rashness with their political lives, shows how strong are the bonds of party regularity in that section of the country. It is doubtless such calculations as these that are in the minds of Mr. Raskob and his associates in the counsels of the Democratic party who appear most eager to force the liquor issue to the front in the next campaign.

But these calculations cannot convince veteran politicians that the existing party alignment can be broken by the liquor issue. The distribution of population in this country between urban and rural areas is such that while, on the basis of the most sanguine estimates, a "wet" party, particularly if it were the Democratic party, might hope to gain a majority in the electoral college, it would have much greater difficulty in gaining control of the Congress. A majority of the American people now live in areas classified by the census as urban, and under the new districting of the states, based on the 1930 apportionment, these areas will probably account for a majority of the congressmen; but the urban population is so distributed among the states that a clear majority of the states continue to be predominantly rural, and, at the present rate of growth of cities, will remain so for at least another decade. A "wet" party, based primarily upon the support of the urban states and sustained by the help of the lower South, or such parts thereof as might adhere to such a party, might succeed in electing "wet" presidents. But could it get its measures through the Congress? The prospect is not good enough to justify prudent politicians in staking their careers on the promise of "wet" legislation. Ardent "wets," dissatisfied with the prospects of their issue under the existing party alignment, may look with favor upon such a realignment of parties, but professional politicians whose business is at stake will prefer to stick to the political strategy which has been approved by time.

The existing major parties are founded at bottom upon durable economic interests which are powerful enough to dominate well-defined regions and, in combination with other similar regional interests, form two solidly entrenched leagues of factions capable of contesting national elections with some chance of success. The liquor issue does

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not fit into the traditional stategy of national politics, and a redivision of the American electorate into "wets" and "drys" offers little prospect of a durable basis for future presidential campaigns. Professional politicians, to be sure, cannot prevent the voters from making the issue, when enough of the voters know what they want and are determined to have it. But they can prevent the issue from becoming the principal subject of contention between the major parties. They can take the "wet" side of the issue in "wet" regions and the "dry" side in "dry" regions. Senator Morrow's campaign for election as a Republican in New Jersey is the most striking illustration of a practice which may become more common if the voters' discontent with the official liquor policy of the Republican party continues to grow in the "wet" states. The refusal of Congress to give its attention to the Wickersham report revealed plainly enough the disposition of congressmen to evade responsibility for reopening the liquor question at Washington. By adopting the Eighteenth Amendment, they had taken the question out of "politics" as completely as they could, and they are evidently not going to let it back in again if they can prevent it. It is not inconceivable that the "wets" should succeed in converting one of the major parties into a uniquely "wet" party, but the failure of the prohibitionists to make the Prohibition party a political power does not augur well for the success of such an enterprise.

A more promising issue for politicians who wish to make the presidential campaign of 1932 something more than a mere continuance of the trench warfare of recent years between the two major parties is a national economic plan. The business depression compels attention to relief measures, and far-sighted politicians will look beyond the immediate emergency and seek for measures which will help to prevent the recurrence of such crises in the capitalistic world. The policy of the present administration makes it easy for the Democratic party to make this issue its own if it wishes. President Hoover has proclaimed his faith in the fundamental soundness of economic individualism. He seems committed to the view that the business cycle eventually will run its course, and that the less the politicians "interfere" with the operation of the "natural" laws of economics, the more quickly will prosperity return. Such views as these lead to a policy of *laissez-faire,* a policy in which the administration seems likely to be confirmed by the ill success which has attended such departures from it as the price-stabilizing speculations of the unfortunate Farm Board.

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If, as seems likely, the Republicans abandon any claims they may possess to proprietorship in a national economic plan, a clear title to the issue passes to the Democrats. It is an issue with interesting political possibilities. The farmers would welcome a plan which would assure them a more stable market for their products. Labor would welcome a plan which would assure greater regularity of employment. Capital would welcome a plan which would avert the menace of radical propaganda. It is an issue which need not jeopardize the traditional supremacy of the Democrats in the South, and which might seduce substantial numbers of Republican farmers, wage-earners, and business men in the North and West. It is an issue which might be advocated with equal confidence in the great industrial states of the East and the great agricultural states of the Mid-West. It is an issue which the Democrats have already begun to appropriate for their own by supporting the Wagner bills in the last Congress.

It must be conceded that economic planning on a nation-wide scale is an enterprise surrounded by serious difficulties in the United States. The federal system of government will inevitably involve the planners in embarrassing conflicts of authority between the state governments and the government at Washington. They will be further embarrassed by the constitutional limitations upon both state and federal powers, and by the lack of an adequate staff of experts in the administrative services at Washington and at the state capitals. The class of men from whom the planners must be drawn have been accustomed to look to private industry for employment, and would presumably be reluctant to enter the public service except temporarily in an emergency. Politicians also have been accustomed to look to business men for leadership in economic affairs, and may well hesitate to assume the responsibilities involved in the elaboration of a national economic plan.

But it would not be necessary for the politicians to devise or endorse a complete and systematic plan comparable in scope and magnitude to that of the Soviet Union. It would be enough to build on the foundations already existing in the United States and to introduce a greater degree of law and order in our disorderly and too often lawless system of industry. Economic planning is not in itself an innovation in capitalistic countries. It is a well-established practice in industries in which the future demand can be estimated by statistical methods and in which the supply can be controlled by the producers. The extension of the system of planned production to other indus-

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tries, difficult though it may be, appears to be the next step in the adaptation of the institutions of the age that is passing to the needs of the age that is to come. The difficulties can be overcome only by the creative leadership of statesmen of bold imagination and practical sagacity. Perhaps such leadership is too much to ask of the present Democratic party. If so, we may look forward to another presidential campaign next year characterized by the usual partisan trench warfare and ending in the usual result.

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Looking Toward 1932. It is an old axiom, replete with common sense, that there is no more uncertain field for prophecy than that of practical politics. This is especially true when any forecast must be made fourteen months ahead of time. All that the observer of contemporary American politics may do is to sum up, as far as possible, the existing state of affairs, and then make a series of *guesses* as to what may eventuate. This present article is written with these conditions in mind, and should be read in the same spirit.

The present political situation would appear to be as follows. Normally, there are at least five million more Republicans than Democrats in the country. This is in large part due to the secession from the Democratic party in 1896 of large numbers of young men, just entering upon adult life or experiencing their first taste of business and finance, who were hostile to the late William J. Bryan and his "free silver" theories. These young men later were added to in large number by the strong, dominant, and attractive personality of Theodore Roosevelt, who typified to them the American spirit. Also the great, underlying influence of economic expansion, the financial and business domination of much of our national life, and the frank acceptance of these conditions by the Republican leaders of the first decade of this century strengthened and accelerated this movement in favor of the "Grand Old Party." The young men of that time, now grown to middle age and national leadership in many walks of life, are the backbone of the financial support of the party today. And they have brought up their children to the same political allegiance.

Since the large majority of our people vote either one of the two old party tickets, no matter what the issues or who the candidates, this predominance of Republican numbers is the great advantage of

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that party, and there is little prospect of Democratic success at a presidential election unless the Republicans are split, as in 1912, or there are exceptional circumstances, as in 1916. In this latter case, a comparatively few people in the average election district, but amounting to a great total in the states or the nation at large, may bolt their own party and support their former opponents. Also the "stay at home" votes may be largely increased, as in the New York gubernatorial campaign of 1930; or these same normally indifferent citizens may have their interest (economic or emotional) aroused to a point sufficient to take them to the polls on election day. This is what occurred in many localities in the campaign of 1928. There is an old and true saying among the practical politicians that "elections usually are won or lost by the stay-at-home vote."

To all appearances, the campaign of 1932 bids fair to be accompanied by the exceptional circumstances that may make Democratic success possible. The present economic depression is a misfortune of a major character to the Republican party. Both in 1924 and 1928, many of its leaders foolishly made the specific claim that their party was responsible for "good times" and general prosperity. The "average citizen" was attracted by this statement, and Republican success, already foreordained, was somewhat increased. But now a logical deduction has been made by these same average citizens, and the same party must shoulder the blame for a world-wide depression which probably was as inevitable as the prosperity that preceded it. The Democrats at present are well aware of their opportunity, and are endeavoring to take advantage of it. As a consequence, there is wide discussion of possible candidates, and many leaders of that party are taking a keen and natural interest in it.

At the time of present writing (September), Governor Franklin D. Roosevelt, of New York, is in the forefront for the Democratic nomination. With a fine record of public service in the New York state senate and as Assistant Secretary of the Navy during the Wilson administrations, of irreproachable private character, he also possesses a personality of extreme attractiveness. This includes a naturally friendly and sincere smile that well might be the envy of any practical politician anywhere. Added to this may be mentioned his election to the office of governor of New York in 1928, when that state was carried by the Republicans for Mr. Hoover, and his reëlection by an enormous majority in 1930. Another advantage, and much to his

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credit, is that Governor Roosevelt, in both the 1924 and 1928 Democratic national conventions, delivered one of the outstanding, if not the best, of the speeches to which the delegates were privileged to listen. And this privilege was enjoyed possibly by millions of interested listeners over the radio throughout the country. Undoubtedly these speeches, so far as the New York voters were concerned, were a great aid in his successful campaigns in that state.

Governor Roosevelt also has the aid of certain public-spirited and leading Democrats of wealth, who see the opportunity to repeat the experience of 1912, when these same men of prominence and influence were largely responsible for the nomination and election of Woodrow Wilson. Their support, quiet and often unobtrusive, is worthy of special attention.

But Governor Roosevelt has undoubted handicaps that may cost him the nomination, or (if nominated) the election. So far, he has steered an extremely skillful course in the current investigations of corruption in New York City. Any such corruption is bound to be laid at the door of Tammany Hall, which is, in very fact, the actual Democratic party in that city. Whether at present deserved or not, the name of Tammany stands as a by-word for all that is undesirable in American politics, so far as the people of the country are concerned. An open break with Tammany at this time undoubtedly would aid much in securing the nomination for Governor Roosevelt. But he must have Tammany support of the first order if he may hope to carry the state of New York in 1932. The fact is usually overlooked that Governor Roosevelt actually received many thousand less votes in 1930 than in 1928, and that his huge majority was caused by nearly one million upstate Republican voters who stayed at home and refused to vote on account of their hostility to the management of the campaign of his opponent, Mr. Tuttle. It is significant that, although they received much reduced majorities in some cases, the Republican congressmen then representing New York were all reëlected. In contrast to this, a strong Tammany support will be a veritable millstone around the neck of Governor Roosevelt throughout the country. Since the Civil War, the three most successful Democratic candidates, Samuel J. Tilden, Grover Cleveland, and Woodrow Wilson, have been either indifferent or hostile to Tammany Hall. This was one of their greatest political assets.

It is possible that his early prominence may be another handicap to Governor Roosevelt, though as yet no one of his opponents seems to

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be collecting delegates to the national convention. Again to quote the politicians, "you cannot beat somebody with nobody"—as the opponents of Governor Smith found to their cost in 1928. So at present, Governor Roosevelt appears far in the lead, with a fair chance of securing the nomination. If ex-Governor H. F. Byrd, of Virginia, should be his running-mate on the ticket, there would be a very effective bid for the renewed allegiance of those southern Democrats who deserted their party in 1928.

It is a matter of greater importance to remember that Alfred E. Smith is still at least titular leader of the Democratic party. He has hosts of loyal and devoted followers, and it is not beyond the bounds of possibility that he might secure the nomination if he should desire it. At least he has the power of veto, and no Democratic candidate would have much chance of receiving the nomination without the support, or at least the tacit approval, of the popular and effective ex-governor of New York.

Newton D. Baker is well worth careful watching, for he has great availability on account of his personal ability, his residence in a so-called pivotal state, and his popularity with the Wilson wing of the party. His greatest handicap would be his sincere and effective advocacy of a very unpopular institution, so far at least as contemporary American politics goes—and that is the League of Nations. This, of course, is entirely aside from any merits of the issue. Mr. Owen D. Young would be of outstanding importance were it not that his relations with certain lines of "big business," which would be a decided asset in many parts of this widespread nation, might arouse hostility among the more radical voters of the West. Governor Albert C. Ritchie, of Maryland, is a possibility, but his support so far is too local to be effective. Senator Joseph T. Robinson, of Arkansas, probably has eliminated himself, in spite of his many and marked advantages, by his unfortunate part in the controversy of January and February, 1931, concerning the appropriation of funds for the relief of the victims of the drought.

So far, attention has been devoted exclusively to the Democratic side of the question because it goes without saying that President Hoover will be renominated by the Republicans. It is hardly an exaggeration to state that only he himself can prevent it, and he has not given the least indication of any such intention. Any president can renominate himself, if he was chosen directly to the office and did

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not attain it by virtue of succession as vice-president. But President Hoover has great and determining elements of strength, both personal and political, which too often are overlooked by his opponents in his own and in the Democratic party. During the war, his name became a household word owing to his relief and food conservation work both here and abroad. His strength with the "plain people," and also with the women's vote, is still but little impaired. Added to this are his real achievements of great moment. Among them is the able handling of drought relief and the prevention of a well-meant but dangerous attempt to bring the Red Cross into politics by using it as a government agency for relief and for the expenditure of public funds. His supporters make the claim of honest and efficient administration of the federal government, and of a steady hand at the helm in a time of great national difficulty. His part in the calling of the London Conference and in its real achievements was outstanding, and his more recent leadership in mitigating the financial crisis in Germany and other European countries by the moratorium on debt and reparation payments has vastly increased his prestige. This is especially apt to appeal to the German and other racial voters in the next campaign. Should his present plans for unemployment relief during the winter of 1931-32 prove successful, they would go far toward reconstituting any diminished strength with the people.

There is an indication of a fuller public appreciation of the burdens that have fallen upon President Hoover in these recent trying years. Very significant of this is the editorial statement in the *New York Times* of September 2, 1931, that the "necessary limitations of the functions and ability of any American president ought to be kept in mind by those who keep on clamoring over what they call Mr. Hoover's do-nothing policy. He is, in fact, doing all he can—and angels could do no more. Among the victims of our prevailing misfortunes, President Hoover must be reckoned as most to be pitied. . . . But inevitable . . . ought to be at least an occasional manifestation of kindly and sympathetic feeling by the American people for a president taxed almost beyond his strength."

President Hoover undoubtedly will have much difficulty in cooperating with the new (or Seventy-second) Congress that meets in December. While very irritating and wearing upon him, any struggle with that body will be apt to add to his popularity and political strength. Unfortunately, our national legislature is exceedingly un-

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popular, and the voters will not be indifferent to any struggle waged or victory gained by the President. Such events also would serve to dramatize his work and his administration of national affairs.

There are rumors that the radical, or "Progressive," elements may inaugurate a campaign to nominate one of their number, as Senator William E. Borah, of Idaho, Governor Gifford Pinchot, of Pennsylvania, or Senator Robert M. LaFollette, of Wisconsin. They hardly can anticipate success in this attempt, but they can use the threat of such a movement, with all its disruptive effects on party unity, as a "club" to force into the platform many of their ideas concerning public utilities, agriculture, and finance. This would be good political strategy, and the "wets" or "drys" might try the same game—and in either party.

It seems probable that the Socialist party will again nominate Mr. Norman Thomas for president. It would appear that the first move in the 1932 campaign was made about the first of September, 1931; and a very clever one it was. Mr. Thomas was then arrested in Paterson, New Jersey, for picketing a silk mill in which there was no strike. This is well-calculated to bring him before the public, and to appeal to many people inclined to vote the Socialist party ticket. The size of this vote will depend somewhat upon the more or less radical type of candidates and platform of the Democratic party.

An even greater degree of uncertainty surrounds the question of platforms and issues dividing the two parties. Since the necessary problem of the party leader is to secure coöperation, and not to alienate the voters, the gentlemen who hold this position in the respective parties will be very slow to commit themselves. The "prohibition" report of the Wickersham Commission was a very faithful replica of the uncertain state of feeling among the American people. Literally, they have not made up their minds. For this reason, neither party will make any specific pronouncement upon prohibition if it can possibly help doing so. Should any statement prove necessary, the Republican party will tend more to the "dry," and the Democratic party to the "wet," side of the question, and with all the disruptive consequences as a result. Both parties will strive to place stress on economic questions. A serviceable and constructive plan for the stabilization of business and the mitigation or prevention of future unemployment would be a great asset to either party. The Democratic party, especially if led by Governor Roosevelt, will *tend* toward more

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"radical" proposals, while the Republicans will be more conservative. The word "tend" is used advisedly, for neither party will go to an extreme. This may aid in increasing the Socialist vote.

A possible element of Republican advantage may come from the new congressional apportionment and change in the electoral college. Of the 27 changes, additional electoral votes will go to normal Republican states in about twice the proportion that the Democratic states will gain. The accompanying losses are more evenly divided.

In conclusion, the statement should be repeated that all this discussion with regard to the outcome of the elections of 1932 is little more than guesswork. The economic condition of the country will be the determining influence to a greater or less degree. The first authentic political indications should come from the various by-elections to Congress and the state elections during November, 1931. Following these, political prophecy will be somewhat more easy. But it is the very uncertainty of the present situation that offers its great element of fascinating interest.

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Third Session of the Seventy-First Congress, December 1, 1930, to March 4, 1931.[1] The almost shamed hush that fell in the Senate at noon on March 4 was more fitting than the jubilation in the House. Certainly there was no ground for congratulations in any corner of the Capitol, and least of all among the group in the President's room.

Membership and Organization. When the session began, the Republicans in the House numbered 266, the Democrats 165, with one Farmer Labor member and three vacancies. The two party shifts involved in the seating of thirteen new members reflected Democratic victories in by-elections in the 6th Wisconsin and 24th Illinois districts. In the Senate, inter-sessional gains on the minority side were more pronounced; there were 42 Democrats instead of 39, leaving 53 Republicans and 1 Farmer Labor member.

The uncertainty that attends the regulation of campaign expenditures by exclusion was illustrated in the seating of James J. Davis, lately Secretary of Labor, as junior senator from Pennsylvania. Mr. Davis stood aside at the opening of the session, in order to permit the chairman of the special committee investigating senatorial campaign expenditures, Gerald Nye, to offer a resolution by which his right to a seat was referred to the select committee. The resolution was rejected on December 2 by a vote of 27 (9 Republicans, 17 Democrats, 1 Farmer Labor) to 58 (39 Republicans, 19 Democrats).[2] The committee on

[1] For notes on the first and second sessions of the 71st Congress, see this REVIEW, Vol. 24, pp. 38, 913. For notes on the 70th Congress, see Vol. 22, p. 650, and Vol. 23, p. 364; and on the 69th Congress, Vol. 20, p. 604, and Vol. 21, p. 297. For earlier notes, prepared by Lindsay Rogers, see Vol. 13, p. 251; 14, pp. 74, 659; 15, p. 366; 16, p. 41; 18, p. 79; 19, p. 761.

[2] In a subsequent report (S.Rept. 1870, filed on March 3), the special committee investigating campaign expenditures said: "Unless the expenditure of more than $600,000 in the primary in behalf of the ticket headed by Senator Davis can be construed as in itself constituting corruption, the evidence . . . does not disclose any corruption for which he may be held personally responsible." On February 25, Senator Davis appeared voluntarily before the subcommittee of the committee on judiciary which had been investigating lobbying, in order to deny that he ever lobbied for or against a tariff measure. On February 28, the Senate authorized (S.Res. 475) the continuance of the subcommittee and made a small additional appropriation to enable it to investigate the allegation that a member of the Senate received $100,000 or more in connection with the item on sugar in the tariff of 1930.

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privileges and elections, acting through subcommittees, took up the dusty task of recounts in Alabama and North Carolina.[3]

The uncertainties of party control in the next Congress cast a sharp but wavering shadow over the proceedings of the session. Nicholas Longworth, speaker since 1925, doubtless had party disadvantage in mind rather than a premonition of his own death in April when he said in farewell: "Perhaps this is the last time I will address you from this rostrum (laughter and applause). I do not mean to say that I regard it as a probability, but I must admit it as a possibility." Immediately after the elections in 1930, the clerk's unofficial roll forecast that in the 72nd Congress the lower house would comprise 217 Republicans, 216 Democrats, and one Farmer Labor representative, and that the Senate would consist of 48 Republicans, 47 Democrats, and one Farmer Labor member. Post-canvass mortality, always heavy but seldom so critical, continued to disturb the fluctuating balance. By mid-summer, the count stood 214 Republicans, 213 Democrats, and one Farmer Labor member, with seven vacancies, including five in districts previously held by Republicans. The situation in the new Congress could hardly be expected to give the President stomach for a special session.

Reapportionment, so tardily won in the act of June 8, 1929, was not allowed to take effect at the close of the Congress without a struggle. Its opponents were able to force the holding of hearings, but in the end the committee on census tabled all proposals to increase the size of the House. The new apportionment, automatically based on figures certified by the President on December 4, will be used first in 1932. In the meantime, there are signs that the appeal to ethnic prejudice may again be invoked by the countryside against the city. On February 19, the committee on judiciary (against the dissenting protest of four members who represented districts in large cities) favorably reported a proposed constitutional amendment as follows: "Aliens shall be excluded from the count of the whole number of persons in each state in apportioning representatives among the several states according to their repective numbers" (H.J.Res. 356).

Problems of organization in a waning Congress are anticipatory. A

[3] The contest of Thomas Heflin, former senator, against William Bankhead concerned the primary election of August 12, 1930. In addition to those involving Alabama and North Carolina, notice of a contest against Senator Schall of Minnesota, Republican, was filed on March 3 by his defeated opponent.

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caucus of the Republican members of the House in the last week of the session renominated Nicholas Longworth for the speakership, reëlected John Q. Tilson of Connecticut as floor leader, and in the usual way authorized the selection of the committee on committees and the congressional campaign committee. Mr. Longworth's death created a new problem in a situation full of uncertainty and intrigue. The floor leader and the chairman of the rules committee, Bertrand Snell of New York, were understood to be the chief claimants to the speaker's chair if the Republicans were able to organize the House. No Democratic caucus was held, but it seemed certain that John N. Garner, Democratic floor leader, would be his party's candidate. Meanwhile, with the margins of control so narrow, rumors were rife regarding attempts to arrange bipartisan concerts of power.

Procedure. It seemed probable, no matter how the contingencies in the disputed control were resolved, that the dissident elements would be in a position in the new Congress to bargain for changes in the House rules.[4] Intimations that concessions would be made were heard unofficially on the Republican side about the time invitations were issued to the preliminary organization caucus. This fact stimulated discussion of the rules during the short session. Especially interesting was the colloquy provoked on January 16, 20, and 31 and February 3 by remarks of Representative Crisp of Georgia, erstwhile parliamentarian of the House and son of a former Democratic speaker. He stressed a proposal to amend the discharge rule so that a petition of 100 names (instead of 218, as has been required since 1925) would be sufficient to put it in operation.[5]

Eight special rules for the consideration of measures (one of which involved seven bills) were adopted in the short session.[6] Three others

[4] On July 12, Representative LaGuardia announced that he had circularized a group of "Progressives" regarding the desiderata of rules reform. He emphasized the need of a provision restricting each state to one member on the committee on ways and means. Previously, in a statement which appeared in the *United States Daily* of June 1, Representative Robert Luce, well-known student of legislative organization, complained of congressional maladjustment from the standpoint of the effect of waste of time in defeating desirable legislation.

[5] The rule (XXVII, subd. 4) as amended on December 7, 1925, has never been successfully invoked. During the short session of the 71st Congress, it was said that a petition in behalf of H.R.14567, having to do with cash advances on veterans' adjusted compensation certificates (an object realized in another way in other thirds. Previously the House rejected in committee of the whole the proposal that legislation) received at least 118 signatures.

[6] Speaking in defense of the rules committee, Bertrand Snell of New York, its

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were reported from the committee on rules, but were not used, the legislation in question passing the House without their aid. Suspension of the rules, subject to the discretion of the speaker, proved as handy as ever.

Grumbling was again heard in the Senate regarding the growing obduracy of the House in conference. Senator Moses, though caustic, is regular, but he went to the length of saying on December 20: "Every time that I sign a conference report in the stated language of the formula, namely, that a 'full and free' conference has been held, I know that I am subscribing to a perjury, because the situation is such that we are immediately confronted in a conference by an adamantine attitude on the part of the conferees appointed by the House." Two deadlocks in the short session were notable. That involving Muscle Shoals was broken under circumstances noted in a later paragraph.[7] The proposal to amend the Constitution in regard to congressional sessions (the "lame duck amendment") came to a complete standstill. A joint resolution on this subject (S.J.Res. 3), having passed the Senate for the fifth time in the second session,[8] was held on the Speaker's desk for nearly a year. On February 24, with the demise of Congress at hand, a similar House resolution was allowed to go to a vote, aided by a special rule. Speaker Longworth took the floor to offer an amendment providing that in even-numbered years

chairman, said on January 31: "There has never been a time since the gentleman from New York has been chairman of that committee when there has been an important controversial piece of legislation before it that he has not gone personally to the Republican whip and asked him to canvass the House on the question in hand for the guidance of our committee and also had a great many other individual members from different sections of the United States canvassing the sentiment of members of their parts of the country, and, as far as possible, we have tried in our official capacity to fairly represent and reflect that sentiment, and the best proof I can offer you for the truth of that statement is, as far as I can now remember, that there has never been a single recommendation of that committee since the gentleman from New York has been chairman turned down by the House of Representatives." At the same time, Mr. Snell avowed his faith as follows: "If I understand the function of the rules committee of the House, it is to act in harmony with the majority sentiment of the majority of the House of Representatives. It is to act in coördination and harmony with the steering committee of the House. It is the duty of the rules committee, as I understand it, to act, as far as possible, for the protection of the administration and the administration program of legislation."

[7] See p. 946 below.

[8] The successive dates of its acceptance by the Senate were: February 13, 1923;

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the sessions should end on May 4. Otherwise, he said, "great and serious danger might follow a perpetual two years' session of Congress." He added: "I will do anything I can to help the passage of this resolution provided this amendment is adopted." The Speaker had his way by a vote of 230 (175 Republicans, 55 Democrats) to 148 (60 Republicans, 87 Democrats, 1 Farmer Labor). He was then willing (in order to expedite matters) to recognize a request for unanimous consent to substitute the Senate resolution, amended of course by inserting the language agreed upon. Thus altered, the measure passed by 290 to 93. In conference, the House leaders indicated a willingness to extend the time to June 1; beyond that they would not go. The Senate conferees wisely insisted that any time limit would defeat one of the major purposes of the proposal.[9]

The Politics of Misery. The fear of the innovative hand of legislation which in general terms was expressed in the opposition of the leaders to the abolition of alternating short sessions was painfully concrete when they measured the risks of a special session after March 4. What strategy there was centered in the sorry determination to avoid one. The President revealed his anxiety when, in thanking the Democratic leaders for the sense of sober responsibility voiced in the statement issued after notable gains had been won in the fall elections, he hoped that it might be taken as a pledge not to filibuster against the appropriation bills. On November 12, he telegraphed to the minority leader in the Senate for reassurance, and on the morrow made known his pleasure that "fear and apprehension" had been blown away. Something like a truce does seem to have been struck with the Democratic leader in the Senate in a conversation on November 30. The minority, it must be said, seemed more hopeful than bold. Events seemed to be going their way; they had no wish to incur pre-

March 14, 1924; February 15, 1926; January 4, 1928; and June 17, 1929. On May 18, 1928, it was voted on in the House, receiving 209 (118 Democrats, 89 Republicans, 2 Farmer Labor) to 157 (55 Democrats, 102 Republicans), less than two-thirds. Previously, the House rejected in committee of the whole the proposal that in even-numbered years sessions should end on May 4.

[9] In his official review of the session, made public on March 13, John Q. Tilson, the majority leader, said: "By the 'lame duck' proposal, instigated and kept alive by an inane but catchy phrase, it is seriously proposed to amend the fundamental law of the land in order to remedy a situation brought about by the archaic rules of the Senate."

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mature responsibility. The nearest approach to the pronouncement of an ultimatum was in a conference of minority senators on January 30, when six items of relief were indicated as the price of avoiding a special session. It was significant that these related almost wholly to the emergency created by drought. Not all of the proposals were realized in legislation, but no organized obstruction was attempted.[10] The Progressive Republicans openly favored a special session.[11] They formulated no threats; they presented no formal demand. Their program, so far as they revealed one, hinged on their desire for action on the pending measures relating to Muscle Shoals, "lame duck" sessions, unemployment exchanges and the planning of public works, and injunctions. Of these, all but the last-mentioned were considered during the session, although the proposed constitutional amendment did not get beyond conference, and two of the others were vetoed at the close of the session. The filibuster by Senator Thomas, of Oklahoma, which filled the closing hours, seems to have been personally planned, and, although the pair of soiled overalls that he exhibited to the Senate was doubtless intended to be a symbol of universal need, the burden of his remarks was a plea in behalf of the independent oil producers'

[10] The chief item was the amendment to the Interior appropriation bill carrying $25,000,000 for general relief purposes. The conference statement said: "There will be no objection to the modification of the amendment in conference so as to specify another agency than the Red Cross to distribute the fund." In the final outcome, "general relief" was contracted to drought relief through loans, essentially. Another item on the list related to the Capper amendment to the Army appropriation bill, making food held by the Federal Farm Board available for relief. The conference statement announced that "the final passage of this amendment will be firmly insisted upon." This demand was not met. Senator Capper's proposal was begun as S.J.Res.210; as passed by the Senate on January 26, it involved authority to dispose of 20,000,000 bushels of wheat "to provide food for the distressed people in the various parts of the United States." This was not even reported in the House. On January 29, the proposal was attached as an amendment to the War Department appropriation bill (H.R.15593) by a vote of 46 to 16.

[11] Senator Borah, for example, said in the Senate on February 2: "I am perfectly willing, if a majority of the Senate is willing to do the same thing, to say that not another appropriation bill shall pass this body until the hungry are fed, until the sick are taken care of, until the government of the United States has met its obligations to its citizens." Senator LaFollette (having joined with Senator David Walsh of Massachusetts in questioning mayors of all places over 5,000 regarding the extent of unemployment) made a number of notable analyses of the situation; for example, on December 20 and January 9. No one can say that congressional debate during the session was lacking in concrete realization of problems.

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request for tariff protection.[12] Later, as the dull year dragged its course there were more emphatic demands that Congress should be called.[13] Senator LaFollette was especially critical of the President's disclaimer on May 22 of intention to call a special session. Again, on August 18, the White House deemed it advisable to dampen hopes by a fresh denial.

Not all of the pressure for a special session concerned depression and drought at home, or emanated from those who were skeptical of the recuperative power of individualism. The question of the World Court involved an element of risk. It was necessary that the Senate should receive and act upon the protocol of accession of the United States and the protocol of revision which had already been ratified by a majority of the nations that are members of the court. In a special message to the Senate on December 10, the President said: "I trust the protocols may have consideration as soon as possible after the emergency relief and appropriation legislation has been disposed of." Nevertheless, no exigent and compelling voice rebuked the committee on foreign affairs when on December 17 it adopted Senator Reed's motion to postpone reporting the matter until the following December. "I offered the motion on my own responsibility," said Senator Reed. "I did it to prevent a special session in the spring." Nine Republicans and one Farmer Labor member voted for delay; two Republicans (Borah and Gillett) and seven Democrats opposed the motion. In July,

[12] Certain questions put by Senator Thomas at the opening of the daily session on March 4 have interest for the student as well as for all who speak in public. Mr. Thomas of Oklahoma. "The first parliamentary inquiry: Is there any Senate rule that provides just how fast a member addressing the United States Senate must speak his words?" The Vice President. "That is a matter for the Senator to determine for himself." Mr. Thomas of Oklahoma. "The second parliamentary inquiry: I have before me numerous notes. Owing to the fact that I was detained on the floor night before last until 3 o'clock in the morning, and detained upon the floor last night until after 1 o'clock, I have not had time to arrange my notes properly, and it may be that during the discussion I may waste a few seconds of time in looking for the data I desire to use. Because of that fact I do not wish to be considered as yielding the floor. . . ." Mr. Bingham. "Under the rules of the Senate, how long may a Senator stand at his desk arranging his notes without talking?" The Vice President. "That would be a question for the chair to determine when the question came up."

[13] A source of agitation for a special session was the announcement of the Department of Agriculture on June 16 that it was not allowed by law to use drought relief funds appropriated in the preceding session to remedy distress due to drought in the new season.

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the plan of a moratorium in connection with inter-governmental debts stimulated talk of the desirability of calling the new Congress together in advance of the regular date. Speaking on July 6, the President said: "I am glad to announce that the American proposal for one year's postponement of all inter-governmental debts and reparations has now been accepted in principle by all of the important creditor governments." He added: "The American part of the plan is, of course, subject to approval by Congress, but I have received the individual assurances of support from a very large majority of the members of both Senate and House, irrespective of political affiliation." Despite the shortness of time available after December 7, and in the face of possible delay in the organization of the House, the President did not admit that there was reason for an earlier opening of Congress.

The widespread drought in the summer of 1930 raised an issue concerning which the agrarian element in the Democratic party could feel strongly. An early collision on this point between the Senate and the House, acting as the administration's ally, nearly put an end to talk of coöperation. The Senate took the initiative. On December 9, without a record vote, it passed a joint resolution (S.J.Res. 211) to authorize the appropriation of $60,000,000 for loans in connection with preparations for the 1931 crop in regions affected by drought or storm. The administration thought that $25,000,000 would be enough; it frowned also on the provision permitting aid in the form of food. The leaders in the House agreed to reduce the amount to $30,000,000. In order to block amendments from the floor, the resolution was taken up on December 15 under a motion to suspend the rules. This failed, however; the vote was 205 (204 Republicans, 1 Democrat) to 159 (16 Republicans, 142 Democrats, 1 Farmer Labor), being less than the two-thirds that the procedure required. A slight emendation was inserted, in the shape of a reference to "such other purposes of crop production as may be prescribed by the Secretary of Agriculture." On December 18, the revised proposal was accepted in committee of the whole by 225 (219 Republicans, 6 Democrats) to 159 (16 Republicans, 142 Democrats, 1 Farmer Labor), and promptly passed the House by the formal vote of 359 to 6 (4 Republicans, 2 Democrats). The disagreement in conference was sharp but quickly compromised. The total authorization was increased to $45,000,000. It was clear that House managers would not accept language that re-

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ferred directly to the distribution of food for human consumption. The Senate was told that relief might be broadened as a matter of administrative discretion in view of the fact that that resolution mentioned "such other purposes incident to crop production as may be prescribed by the Secretary of Agriculture." Despite some tart complaints regarding the face-saving indirection and deliberate obscurity of the compromise, it was adopted in both houses on December 19 and became law on the following day.

This did not end the matter. It was still necessary to make the appropriation thus authorized. A joint resolution (H.J.Res. 447) which carried $45,000,000 passed the House on January 5. On the same day the Senate amended it on Senator Caraway's motion, adding $15,000,000 "for the purchase of food under such terms as may be prescribed by the Secretary of Agriculture." The House guardians handled the situation circumspectly. For a time the measure rested safely on the Speaker's desk. On January 13, a special rule was offered which provided that it should be "taken from the Speaker's table to the end that all Senate amendments be, and the same are, disagreed to and a conference is requested with the Senate." The crucial test of strength was on the previous question to the rule, which carried 215 to 143; the rule itself was adopted 352 to 4. Representative LaGuardia's motion to advise that the conferees concur in the Senate amendment and also seek the removal of "all limitations as to classes, occupations, or residence of persons" was blocked on grounds of irrelevancy by a point of order sustained by the Speaker. The Senate gave way on January 14.[14] Its interest had already shifted to the more practicable expedient of appropriating for relief through an amendment to the Interior Department supply bill.

The new phase of the controversy involved a significant question, for it raised the issue of public *versus* private sources of relief, and of taxation versus voluntary charity. Senator Robinson, the minority leader, moved an amendment to the Interior Department appropria-

[14] On January 15, the Senate adopted a resolution (S.Res. 401) by which the Secretary of Agriculture was informed regarding the "intent and purpose" of the Senate when it "voted for the drought relief measure." He was told that relief should be given to stricken families, even in counties "where the distress caused by the drought is not general." Less perspicuous, perhaps, was the advice "that it is the sense of the Senate that the relief here provided should be granted wherever the conditions and facts justify it, and the Secretary of Agriculture is hereby requested to see that it is done."

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tion bill (H.R. 14675) appropriating $25,000,000 "to be immediately available and to be expended by the American Red Cross for the purpose of supplying food, medicine, medical aid, and other essentials to afford adequate human relief in the present national emergency to persons otherwise unable to procure the same." This was first adopted without a record vote, but was reconsidered on January 19, when it was repassed by 56 (20 Republicans, 35 Democrats, 1 Farmer Labor) to 27 (all Republicans). Hearings were held before the House committee on appropriations. The central committee of the American Red Cross announced that it could not accept the administration of the funds. The critical vote in the House itself was on January 30. Having disagreed with the Senate amendment by 224 to 90, the House rejected the substitute proposal of the ranking minority member of the appropriations committee that the President might utilize other agencies if the Red Cross did not care to act. This was defeated by a vote of 149 (127 Democrats, 21 Republicans, 1 Farmer Labor) to 212 (207 Republicans, 5 Democrats).

On the same day, a minority conference in the Senate served a virtual ultimatum. In his formal statement regarding the conference, the Democratic leader said: "Unless this amendment be agreed to or a satisfactory modification of it in conference, it is expected that the Interior appropriation bill will fail of passage, as likewise any resolution that may be offered making available sums equivalent to those appropriated for the current fiscal year. . . ." The President interjected a lengthy public statement on February 3, in which, as he put it, he dealt with fundamentals: "It is a question as to whether the American people on the one hand will maintain the spirit of charity and mutual self-help through voluntary giving and the responsibility of local government as distinguished on the other hand from appropriations out of the Federal Treasury for such purposes." Again a compromise was arranged, taking the form of the appropriation of $20,000,000 to be expended by the Department of Agriculture in accordance generally with the original drought relief resolution, now somewhat liberalized, so that the new funds could be used "for crop production and for further agricultural rehabilitation."[15] Senator LaFollette said

[15] The student of the working relations of the branches of government will profit by pausing to note a clumsy but not untypical incident. While the conference report was before the Senate, questions were raised regarding the interpretation that the Secretary of Agriculture would put on it and the spirit with which he

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of this: "Upon analysis, the proposed amendment is not a compromise. It is an unconditional surrender." Retreat it clearly was from the standpoint of the fact that the new provision, unlike the original amendment, was confined to hang-over conditions consequent on drought and could not embrace urban unemployment. Senator Robinson revealed his own natural preoccupation in saying: "If anything is to be done, it ought to be done quickly, because if we wait until an extra session of Congress to enact measures of relief for the drought-stricken region they will be futile in the main, because the time will have passed when they can be of service."[16] Thus did he answer the complaints of a few associates like Glass and Wheeler that he had marched them down the hill so recently ascended.[17] The will to force the issue further was lacking. On February 14, the Senate agreed to the conference report by a vote of 67 to 15 (8 Republicans, 6 Democrats, 1 Farmer Labor).

Friction between the White House and Congress likewise marked certain phases of the program for buffer employment through augmented public construction. The President, in his regular message on December 2, said: "I have canvassed the departments of the government as to the maximum amount that can properly be added to our present expenditure to accelerate all construction during the next six

would administer it. The query was put to him in a resolution (S.J.Res. 440) which pursued him to another city where he was making a speech. His telegraphed reply on February 12 was marked by a balanced obscurity which reminded Senator Norris of the Wickersham report. A somewhat different use of a resolution occurred on February 27 (S.Res. 479), when the Secretary was "requested to inform the Senate immediately: First, why the fund of $20,000,000 . . . has not been made available . . . and second, when he proposes to act in this matter."

[16] There were persistent rumors, even open charges, that the Arkansas senators, spearheads in the drive for emergency relief, were willing to compromise in the end, even to the length of overlooking the aspect of general as distinguished from drought relief, after they had been seen by Harvey L. Couch of Little Rock, banker, director of utilities, leading citizen, and Red Cross relief chairman for Arkansas.

[17] It is interesting, on the other side, to recall the characteristically neo-Jeffersonian comment in an editorial in the late *New York World* of February 3, 1931: "The Democratic party is playing with dynamite. In the last week its leaders in Congress have placed it in a position where it can properly be charged with an irresponsible willingness to raid the public treasury. If the party does not extricate itself promptly from this position, if in fighting for these measures it forces an extra session and identifies itself with inflation and subsidy, it will have achieved the miracle of reëstablishing the morale of the Republican party."

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months, and I feel warranted in asking the Congress for an appropriation of from $100,000,000 to $150,000,000 to provide such further employment in this emergency. . . . I recommend that this appropriation be made distributable to the different departments upon recommendation of a committee of the cabinet and approval by the President." Two days later he transmitted an estimate calling for the larger sum. These recommendations were only partially met in the bill (H.R. 14804) passed by the House on December 9, for the amount was set at $110,000,000[18] and was assigned to major purposes by the measure itself, subject to reassignment by the President. The Senate raised the total to $118,000,000 and on Senator Robinson's motion eliminated the provision for discretionary reassignment. This step did not foster cordiality at a time when the President was talking about "playing politics at the expense of human misery" and almost simultaneously provoking critics from another side by declaring (December 9) that "prosperity cannot be restored by raids upon the public treasury." On the immediate point at issue, the Senate soon gave way, and on December 18, by the close vote of 42 (31 Republicans, 8 Democrats) to 39 (11 Republicans, 25 Democrats, 1 Farmer Labor), dropped the amendment that denied the President power to reallocate the emergency fund.[19] The final act, approved on December 20, carried $116,000,000 "for the purpose of providing emergency construction on certain public works during the remainder of the fiscal year 1931 with a view to increasing employment." Stated amounts were given to roads, waterways, and flood control, subject to the stipulation that "the sums herein appropriated shall be available interchangeably for expenditure on the objects named in this act upon order of the President."

The process of untying statutory restrictions on construction was carried a few steps further. Buildings notably were involved. An act approved on February 6 (H.R. 14040, Public No. 608) facilitated the

[18] The $40,000,000 reduction was thus explained in the report from the committee on appropriations: "In separating this sum of $110,000,000 from the total request of $150,000,000, the committee has segregated those items which have the broadest national scope, which have an unquestioned public need to be served, and which will give the most and immediate employment when the appropriations are made and placed at the disposal of the departments charged with the responsibility of expending them."

[19] The Senate surrendered also in dropping an amendment sponsored by Senator Couzens requiring the employment of local labor, if available, and the observance of local wage standards.

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inauguration of projects in a number of respects, and a measure signed on February 16 (H.R. 16297, Public No. 671) permitted the Secretary of the Treasury, in entering into contracts for the construction of buildings, to exceed by not more than five per cent the amounts available under the estimated limit of cost fixed by Congress. In addition, the latter extended the authorization of appropriations in behalf of the public building program, outside the District of Columbia, $100,000,000. It was said by the chairman of the House committee that the public building program will be completed in 1935, three years earlier than was originally contemplated.

Labor has made the restriction of immigration a popular as well as a conveniently mathematical remedy for labor's ills. So-called patriotic societies have been quick to take advantage of the attitude thus engendered. In his regular message, the President called attention to the fact that administrative policies in the application of the phrase "likely to become a public charge" had already resulted in curtailing drastically the number of visas issued. His references to legislative policy were perhaps purposely vague: "There is need for revision of our immigration laws upon a more limited and selective basis, flexible to the needs of the country. . . . The whole subject requires exhaustive reconsideration." Congress confined its attention to drastic proposals of an ostensibly emergency character. Amid a confusion of counsel, action took the form of a ninety per cent reduction for a period of two years. This was provided in a joint resolution adopted in the House on March 1 under suspension of the rules, the vote being 295 to 83. Senator Reed, with characteristic force, attempted on March 3 to secure favorable action in the Senate. His motion to discharge the committee from consideration of the joint resolution was accepted by 44 to 13, but, standing 22 to 34, the Senate refused to take it up, under suspension of the rules, at a time when it would have displaced the copyright bill. Deportation also must be reckoned with as a practical aid in times of unemployment. The President urged, in general terms, the "strengthening of our deportation laws," and recommended increased appropriations for their enforcement. Bills on the subject were favorably reported in the House, but did not move farther. Appropriations were augmented, however, and the new Secretary of Labor was thus aided in pursuing his favorite contribution to the solution of the perplexities of the business cycle.

Advance planning of public works was at last provided for by law.

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The victory here, so far as there was an issue, lay with the Senate. The bill (S. 3059) sponsored by Senator Wagner passed the Senate as early as April 28, 1930. It was so amended in the House, where it passed on July 1, that it was unsatisfactory to its authors. Speaking in the Senate on January 21, when he presented a bill of a different number (S. 5776), Senator Wagner explained the substitution: "Upon my motion, the Senate disagreed to the House amendments, because the amendments really took the heart out of the bill. Thereafter a conference committee was appointed and met and restored practically all of the provisions which had been eliminated by the House; but some additional amendments were proposed by the administration, to which I agreed. The conference committee felt, however, that it was not within their power to report the bill with these additional amendments. For that reason, I introduced this bill in its amended form as an original proposal." Having passed the House on February 2, with amendments to which the Senate did not object, the measure was signed on February 10. "The act," said the President, "gives wider authority and specific authorization for the methods which have been pursued by the administration during the past fourteen months in respect to the planning and acceleration of Federal construction work for purposes of relief to unemployment in times of depression."[20] This welcome at the White House door was in contrast to the veto that was waiting for the bill to institute coöperative employment exchanges.[21]

Rugged Vetoes. The House addressed itself tardily to the bill (S. 3060) for the development of a coöperative, federally aided system of employment exchanges, which the Senate had passed on May 12, 1930. When the House was allowed to act on February 23, however, it showed little hesitation in turning down the substitute bill instigated by the Secretary of Labor. The substitute took the core out of the

[20] The President's statement, while commending Senator Wagner and Representative Graham for working out "an admirable measure in which they have adopted the constructive suggestions of the various government departments," properly speaks of the work done in developing the idea by Otto Mallery of Harrisburg, and also Edward Eyre Hunt of the Department of Commerce. Senator Wagner, for his part, still has justification for his remark on June 21: "There has been inexcusable sluggishness in the consideration of the bill. Although it has long enjoyed universal approval, it was halted and resisted at every step in its legislative journey." The act creates an ex-officio Federal Employment Stabilization Board, but it was indicated that its administration would be a function of the Department of Commerce. On June 16, D. H. Sawyer, a consulting engineer, was appointed director.

[21] See p. 946 below.

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original, for it eliminated the conditional subsidies, on the one hand, and, on the other, the authority given for direct federal administration in completely inactive states. This proposal, in the face of the combined authority of Secretary Doak and the venerable chairman of the House judiciary committee, whose term for federal aid was "dole," mustered only 84 votes to 182. The Senate bill, slightly amended, then passed without a record vote. It provided that $1,500,000 should be available in the current fiscal year and $4,000,000 annually in 1932, 1933, and 1934, three-quarters of which should be allotted among the states on the basis of population, to be matched by state funds. This went to the President on February 24. The veto that killed it was of the pocket type, but the President was not Calvin Coolidge; he gave his reasons in a statement on March 7. It is questionable whether there could be found a more disingenuous document among recent state papers. The Wagner bill, it was said, would fatally disturb the existing, successfully operating machinery in the Department of Labor, which had needed only the added funds recently made available to be fully effective. Did not the bill expressly state that "the employment service now existing in the Department of Labor is hereby abolished?" The bill would substitute forty-eight virtually independent services; it would improperly subordinate these to arbitrary federal control through the power of the purse. Such was the so-called veto. It was not strange that adverse criticism was sharp, and that it spread. The Secretary of Labor was voluble in self-justification. On April 18, the employment service was reorganized; on August 31, its former director (a person, it may be said, of no outstanding parts) resigned by request. Thus did the existing machinery demonstrate its satisfactory nature!

In his messaged veto of the joint resolution (S.J. Res. 49) regarding Muscle Shoals, the President came to grips with the Senate and won. During the course of the conference deadlock on this measure which hung over from the previous session, the leverage of the Senate had been increased by anticipation of the fact that the newly elected Congress was likely to be more, rather than less, friendly to public operation. After repeated failures, the conferees finally reached an agreement on February 18.[22] The gist of the compromise lay in the combination of the scheme for governmental operation through a Muscle Shoals Corporation of the United States with an alternating leasing provi-

[22] S. Doc. 272, February 19, 1931.

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sion. The extent of Senator Norris' seeming victory was indicated by the fact that the latter must be exercised by the President within twelve months, if at all, and applied only to the nitrate plants, which were to be used by the lessee "exclusively in the production and manufacture of fertilizer and fertilizer ingredients to be used in the manufacture or production of fertilizer." The emphasis upon power was evidenced in the authority given to the governmental corporation "to sell the surplus power not used in its operations and for operation of locks and other works . . . to states, counties, municipalities, corporations, partnerships, or individuals." It was stipulated that "in the sale of such current by the board it shall give preference to states, counties, or municipalities purchasing said current for distribution to citizens and customers;" and stated further that the corporation was authorized "either from appropriations made by Congress or from funds secured from the sale of such power to construct, lease, or authorize the construction of transmission lines." On February 20, the House adopted the conference report by the substantial margin of 216 to 153. The Senate acted three days later; the vote was 55 (20 Republicans, 35 Democrats) to 28 (26 Republicans, 2 Democrats).

On March 3, the President returned the joint resolution with a lengthy veto message. He dismissed the alternative authority to lease the nitrate plants as being of no practical importance in view of the limitations put on lessees.[23] The measure as a whole, the President had remarked in a preliminary statement on March 1, was "an engineering proposition . . . subject to the cold examination of engineering facts." He had pointed out that it was being made a symbol, echoing here a phrase used by Representative Franklin Fort in the course of the House debate. In this he was correct, for naturally enough, amid confused and immature politics, contending social philosophies seek to express themselves by overloading immediate issues with an importance that is symbolical. A vivid illustration of the tendency to symbolize was the veto message itself, which began with a formidable show of figures but soon passed to the avowal of faith implicit in the allusions to "the initiative and enterprise of the American people" and to "the vicissitudes of national politics and the tyranny of remote

[23] The veto message added on this point: "Inquiries have been made of the most responsible and experienced concerns that might possibly undertake such lease, and they have replied that under the conditions set out in the bill it is entirely impractical for them to make any bid."

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bureaucracy.'' In an age of holding companies, the President affirmed that ''the real development of the resources and the industries of the Tennessee Valley can be accomplished by the people in that valley themselves.'' With this in view, he recommended that a commission be constituted to represent Alabama and Tennessee, along with members from the national farm organizations and the corps of engineers.[24]

The proponents of the measure were outspoken in criticizing the President for what Senator Norris called ''his wicked, his cruel, his unjust, his unfair, his unmerciful veto;'' but under the circumstances they would doubtless have been glad to forego the attempt to override it. The supporters of the administration pressed their temporary advantage. In the course of the night session on March 3, the joint resolution was again brought to a vote, receiving 49 (16 Republicans, 32 Democrats, 1 Farmer Labor) to 34 (31 Republicans, 13 Democrats).[25] A shift of two votes would have yielded a two-thirds majority in the Senate, but it was unlikely that the House as then constituted would follow so far.

In his veto of the measure that increased the loan basis of World War veterans' adjusted compensation, though with better reasons, the President came into collision with the House and was worsted. Congress reflected not only the immediate desires of veterans, but also widespread support among the petty, local elements (which in the aggregate comprise so large a part of business enterprise) for legislation that promised to release a considerable amount of purchasing power. As early as the beginning of January, it was said that forty-seven bills dealing with loans to veterans had been introduced in the House. A compromise measure (H. R. 17054), increasing the loan value of adjusted compensation certificates up to fifty per cent of their

[24] On July 14, the President announced the appointment of a commission to advise regarding the disposition of Muscle Shoals. He appointed to it two representatives of the War Department and the president of the American Farm Bureau Federation. The other members were named by the governors of Alabama and Tennessee under authority given by their legislatures. The commission solicited ''informative bids.'' On August 14, one of the representatives of Tennessee resigned, explaining that a majority of his associates were ''apparently proceeding along a well-defined and preconceived plan to devote the property primarily to the production of fertilizer.''

[25] Those who shifted to the negative were Couzens (who favored the measure previously, but who was paired against over-riding the veto) and Thomas of Idaho, Republicans, and Steck of Iowa, Democrat. The other Democrats in the negative were Ransdell of Louisiana and Tydings of Maryland.

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face value[26] passed the House on February 16 under suspension of the rules by 363 (212 Republicans, 150 Democrats, 1 Farmer Labor) to 39 (all Republicans). Two days later it was hurried through the Senate in order to preclude resort to the pocket veto; the division was 72 (34 Republicans, 37 Democrats, 1 Farmer Labor) to 12 (all Republicans, including Borah alone of the Progressives). The President's veto was delivered on February 26, and promptly over-ridden in the House by 328 (179 Republicans, 148 Democrats, 1 Farmer Labor) to 79 (all Republicans). On February 27, the Senate completed the undoing of the veto by 76 (36 Republicans, 39 Democrats, 1 Farmer Labor) to 17 (16 Republicans, 1 Democrat).

In summary of the use of the veto power, it may be said that during the short session the President disapproved of seven measures by regular or messaged vetoes,[27] and five by pocket vetoes.[28] The President's power to sign bills after the adjournment of Congress was fortified by a ruling of the Attorney-General.[29]

Appointments. The delegation to administrative agencies of vast responsibilities, with practically no guidance in the form of unmistakable statutory policy, has overloaded the President's appointing power. It has become a vortex of hot, amorphous controversies not yet solidified. The embarrassments of the situation are not less regrettable because it is probably an unavoidable transitional stage. The difficulties were illustrated during the short session in connection with the Federal Power Commission, and also, though less dramatically, the Federal Reserve Board and the Tariff Commission.

The reorganization of the Federal Power Commission by the act approved on June 29, 1930, created five positions of crucial importance. They were temporarily filled by recess appointments, and the in-

[26] The Treasury (whose hostile views were predicated partly on the injurious effect which the undertaking might have on the bond market) estimated that the measure involved a potential liability of $1,720,000,000.

[27] H.R.17054 (veterans' loan, repassed over veto); S.J.Res.49 (Muscle Shoals, the attempt to over-ride failing); and also—all of minor importance—H.R.1036, 3368, 6997, 13584, S.3165.

[28] S.3060 (employment exchanges); S.543 (pay of rural carriers); and also H.J.Res.357, H.R.8677, S.3924—all of negligible general interest.

[29] It was said that approximately 400 bills, mostly of minor importance, were presented within the few days before adjournment. For an earlier discussion of the problem, see Lindsay Rogers, "The Power of the President to Sign Bills after Congress has Adjourned," *Yale Law Journal*, XXX, pp. 1-22 (Nov., 1920).

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cumbents were nominated at the opening of the third session. The candidates were questioned by the commerce committee of the Senate, clumsily, it must be said, but at significant length. The unfortunate reaction of the provision for bipartisan membership was illustrated in the fact that much of the scrutiny and discussion, which might better have been concerned with competence and tendency, dealt with the question whether F. R. McNinch of North Carolina, having been active in behalf of Mr. Hoover in 1928, was a Democrat. On December 19, two of the nominees whose initial terms were short—C. L. Draper of Wyoming and R. B. Williamson of Washington—were confirmed without opposition. On the following day, the controversial names were considered. George Otis Smith, director of the Geological Survey since 1907, was confirmed by a vote of 38 (25 Republicans, 13 Democrats) to 22 (10 Republicans, 11 Democrats, 1 Farmer Labor); F. R. McNinch, by 46 to 11 (10 being Democrats); and M. Garsaud of Louisiana, by 42 to 14. The Christmas recess of Congress began almost immediately thereafter. On December 23, the chief accountant of the former commission, William V. King, and the solicitor, Charles A. Russell, were apprized of the fact that the reorganized commission did not wish their services.[30] A storm of protest was heard when the Senate reconvened; on the basis of their records, King and Russell were symbols of the tendency toward strictness in regulation and a disposition to resolve doubts in favor of operation by public authorities. A technical peg was available for the opposition in the Senate rule (XXXVIII) which provides that reconsideration may be moved within two *legislative* days. A motion requesting the President to return the papers of confirmation relative to three members of the commission was accordingly made on January 5, debated at length, and adopted on January 9 by a vote of 44 (13 Republicans, 30 Democrats, 1 Farmer Labor) to 37 (32 Republicans, 5 Democrats). The President's refusal was received on the following day. It said in part: "I cannot admit the power of the Senate to encroach upon the executive function by removal of a duly appointed executive officer under the guise of reconsideration of his nomination." Simultaneously, in a lengthy public statement, he protested against the "hope of symbolizing me as the defender of power interests if I refuse to sacrifice three outstanding

[30] The commission took the view that the tenure of members of the old staff automatically terminated on December 22, when a majority of the newly constituted commission met. Mr. King was subsequently reappointed.

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public servants or to allow the Senate to dictate to an administrative board the appointment of its subordinates, and if I refuse to allow fundamental encroachment by the Senate upon the constitutional independence of the Executive." The Senate's answer was to order the names restored to the executive calendar by a vote of 36 (12 Republicans, 23 Democrats, 1 Farmer Labor) to 23 (20 Republicans, 3 Democrats). On January 23, the names were recommitted by a vote of 45 (13 Republicans, 32 Democrats) to 32 (28 Republicans, 4 Democrats). On February 4, George Otis Smith failed of confirmation, the division being 33 (29 Republicans, 4 Democrats) to 40 (10 Republicans, 29 Democrats, 1 Farmer Labor). The others, Garsaud and Draper, were confirmed by narrow margins. The next step in the procedure conceived by Senator Thomas Walsh was the adoption of a resolution (S. Res. 415, accepted without a record vote on February 5) requesting the district attorney for the District of Columbia "to institute proceedings in *quo warranto* under the code of said District in the Supreme Court thereof to test the right of George Otis Smith as a member of the Federal Power Commission."[31]

The chairmanship of the Federal Reserve Board gave rise to controversy. Eugene Meyer was serving under a recess appointment. Confirmation was opposed by persons as different as Senator Brookhart, who thought the nominee represented Wall Street, and Representative McFadden, chairman of the House committee on banking, who thought he represented Europe. The fact that hearings were held was indicative of a tendency which, under the circumstances, seems desirable; but the questioning was inept. Mr. Meyer was enabled to say: "I cannot and will not answer questions as to how I will conduct myself if and when I am confirmed." Confirmation was voted on February 25, after two days' debate, by the ample margin of 72 (42 Republicans, 29 Democrats, 1 Farmer Labor) to 11 (4 Republicans, 7 Democrats, with three others paired in opposition).

When the nominees to the reorganized Tariff Commission were interrogated by the Senate committee on finance, innocence was the shield of Henry P. Fletcher, former diplomat, who had been named as chairman. When asked, "What are your general views with reference

[31] The district attorney was advised by the Attorney-General to lend his name, but not other aid. A subcommittee of the Senate committee on judiciary announced on February 18 that John W. Davis and Alexander J. Groesbeck had been engaged as special counsel. Suit was filed on May 4.

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to the tariff," he answered, "I haven't any views on the tariff."[32] It was a successful defense, though it did not pass without comment in the Senate.[33] Mr. Fletcher and two others were confirmed without a record vote on January 12. On the following day, the remaining names were acted upon. There was open opposition only to Edgar Brossard of Utah, a member of the former commission. After eight hours' debate, in which much was heard of sugar, Mr. Brossard was confirmed by a vote of 45 to 36 (7 Republicans, 28 Democrats, 1 Farmer Labor).

Enactments. A bare list of enactments that rose above the ruck will serve the purposes of reference and summary:

1. Possibilities of permanent importance inhere in the very cautious act (S. 5776, approved February 10, Public No. 616) that created the Federal Employment Stabilization Board, to be composed of the Secretaries of the Treasury, Commerce, Agriculture, and Labor, to be supplied with a staff, and charged with advising the President regarding the need of emergency appropriations during any "period of business depression and unemployment." Each construction agency was directed to maintain a six-year advanced plan.

2. Transitory relief took several forms. (a) Conditions consequent to the drought in 1930 were the object of S.J.Res. 211, approved December 20, Public Resolution No. 112, which authorized loans aggregating $45,000,000, the sum being appropriated by H.J.Res. 447, approved January 15, Public Resolution No. 114. A rider on the Interior Department Appropriation Act (H.R. 14675, approved February 14, Public No. 666) provided an additional $25,000,000 and liberalized the conditions of its use. (b) Additional funds aggregating $116,000,000 for use on roads and waterways during the then current fiscal year were appropriated by H.R. 14804, approved December 20, Public No. 550. The regular appropriation acts, of course, made many increases in allowances for construction in the new fiscal year.[34] (c) The building program outside the District of Columbia was enlarged by an increase of $100,000,000 in the authorized appropriation (H.R.

[32] *Hearings before the Committee on Finance, U. S. Senate, 71st Congress, 3d session, on the Confirmation of Members of U. S. Tariff Commission,* Dec. 6, 8, and 9, 1930, p. 7.

[33] It was announced on July 28 that Mr. Fletcher, whose only purpose had been to energize the reorganization of the commission's work, would leave it about November 15.

[34] See the summary table on p. 953.

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RECAPITULATION OF APPROPRIATION ACTS, THIRD SESSION, SEVENTY-FIRST CONGRESS

Act	Total, Budget estimates	Totals of bills as reported by House Committee on Appropriations	Appropriations	Increase (+) or decrease (−) appropriations compared with Budget estimates	Increase (+) o decrease (−) appropriations Seventy-first Congress, third session, compared with same for Seventy-first Congress, second session
Regular Acts, Fiscal Year 1932					
Agriculture	$213,919,040	$213,043,702	$215,578,862	+$1,659,822	+$60,181,092
District of Columbia	45,843,517	45,596,228	45,672,838	−170,679	−103,194
Independent offices	1,055,358,190	1,052,568,140	1,052,777,010	−2,581,180	+499,253,844
Interior	69,588,741	68,561,006	89,247,606	+19,658,865	−197,295,817
Legislative	28,690,611	23,857,975	26,973,185	−1,717,426	+415,417
Navy	361,173,248	344,342,952	358,253,952	−2,919,296	−22,319,159
State, Justice, Commerce, and Labor	138,650,960	135,789,668	137,423,954	−1,227,006	+23,170,718
State	17,590,073	18,681,326	17,522,323	−67,750	+501,854
Justice	51,988,261	51,239,201	51,239,201	−749,060	+19,468,089
Commerce	54,635,226	54,035,941	54,332,230	−302,996	+1,091,745
Labor	14,437,400	13,830,200	14,330,200	−107,200	+2,109,030
Treasury and Post Office	1,104,280,353	1,083,553,943	1,083,148,923	−21,131,430	−65,939,085
Treasury	255,436,296	241,750,026	241,865,146	−13,571,150	−70,439,785
Post Office	848,844,057	841,803,917	841,283,777	−7,560,280	+4,500,700
War Department	450,347,891	446,024,150	445,765,735	−4,582,156	−10,778,416
Military	338,933,359	334,956,880	334,705,965	−4,277,394	−4,400,494
Non-military	111,414,532	111,067,270	111,059,770	−304,762	−6,377,922
Total, regular acts	3,467,852,552	3,413,337,765	3,454,842,066	−13,010,486	+286,585,400
Deficiency and Miscellaneous Acts					
Emergency construction act	150,000,000	110,000,000	116,000,000	−34,000,000	.....
First deficiency, 1931	95,882,528	92,393,328	109,303,822	+13,421,293	.....
Second deficiency, 1931	79,986,802	59,108,419	83,991,031	+4,004,229	.....
Total, deficiency	325,869,331	261,501,747	309,294,853	−16,574,477	+65,642,059
Miscellaneous, Relief, Claims, and other Acts					
Federal Farm Board, agricultural marketing fund	150,000,000	.....	150,000,000	.....	.....
Farmers seed, feed, etc., loan	45,000,000	.....	45,000,000	.....	.....
Sundry miscellaneous	5,200,671	.....	5,417,378	+216,707	.....
Total, miscellaneous, etc.	200,200,671	.....	200,417,378	+216,707	+156,948,597
Grand total	3,993,922,554	3,674,839,512	3,964,554,298	−29,368,255	+509,176,057
Permanents and indefinites	1,213,970,669	.....	1,213,910,669	.....	.....
Total	5,207,893,223	.....	5,178,524,967	.....	.....

16297, approved February 16, Public No. 671); and this and another act (H.R. 14040, approved February 6, Public No. 608) liberalized the procedure. (d) The World War Adjusted Compensation Act was amended to increase the loan basis to 50 per cent of the face value of the certificates (H.R. 17054, passed over the veto February 26-27, Public No. 743). (e) An additional $150,000,000 was appropriated to the revolving fund of the Federal Farm Board (H.R. 15359, approved

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December 22, Public No. 551); and later the appropriation act for the independent offices (H.R. 16415, approved February 23, Public No. 720) gave $100,000,000 more, completing the fund authorized by the act of 1929.

3. An amendment to the National Prohibition Act (H.R. 9985, approved January 15, Public No. 557) emerged from conference, to which it had been sent in the preceding session. It sought to differentiate the treatment of casual and commercial violations by providing that where the defendant "has not theretofore within two years been convicted of a violation of the said Act or is not engaged in habitual violation of the same," and where the amount involved is not more than one gallon, the punishment shall be a fine not to exceed $500 or confinement in jail without hard labor not to exceed six months.[35]

4. The basis for a "ten-year coöperative program" in curbing predatory and injurious animals was laid in the authorization of $1,000,000 annually for a decade (H.R. 9599, approved March 2, Public No. 776).

5. Changes were made for the purpose of strengthening the legislation on oleomargarine (H.R. 16836, approved March 4, Public No. 16836).

6. The Warehouse Act was amended in a number of respects (H.R. 7, approved March 2, Public No. 772).

7. The General Leasing Act of 1920 was altered, mainly in the direction of facilitating coöperative or unit plans of development (S. 6128, approved March 4, Public No. 853).

8. Further easing of naturalization in behalf of married women was the object of H.R. 10672, approved March 3, Public No. 829.

9. A scheme of grading and classification of clerks for the foreign service was established by an act (H.R. 9110, approved February 23, Public No. 715) that amended previous legislation at numerous points.

The final story of any session is never told, for when it can be written it appears as the account of later Congresses. Short sessions

[35] The limited character of the legislation enacted gives no idea of the verbal attention that prohibition received in connection with the attempt to pass a relatively drastic enforcement act for the District of Columbia (S. 3344, which may have served as a buffer, though it seemed on the verge of passing the Senate); in connection with the report of the National Commission on Law Observance and Enforcement, transmitted to Congress on January 20; and in connection with the usual attacks incidental to appropriations.

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are notably full of seeming frustration.[36] It is reassuring that, at the price of much fumbling, the congressional system has enough vitality to project its inquiries ahead into questions like the relation of money to politics, unemployment insurance, and the possibilities of a national economic council.

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The Time of Meetings of Congress. In public discussions of the proposed Norris "lame duck" amendment, and in demands by members of Congress for special sessions to meet temporary emergencies, the fact is often overlooked that Congress itself has the power to regulate the time of its meeting. The fourth section of Article IV of the Constitution provides: "The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day." Under this provision, the much-criticized rush of bills in the short session could easily be averted by an act convening Congress at an earlier date than the first Monday in December. So, too, a Congress whose final session was coming to a close could provide that its successor should meet immediately, instead of waiting until the following December. A Congress desirous of a special session on a problem like unemployment could call such a session irrespective of lack of action by the President, provided it could command a majority sufficient to over-ride a possible presidential veto. Of course such action could be taken only while

[36] The renewal of maternity aid on a permanent basis (S.255) nearly passed; the conference report had been accepted in the House and was pending in the Senate. An important bill on copyrights (H.R.12549), having passed the House on January 13, 185 to 34, was the unfinished business of the Senate at the end. The Capper-Kelly resale price bill, sometimes called "fair-trade bill" (H.R.11), passed the House on January 29 without a record vote, but was not reported in the Senate. The motor bus bill (H.R.10288) was taken up in the Senate at the beginning of the session, but was recommitted on December 4 by 51 (25 Republicans, 26 Democrats) to 29 (20 Republicans, 8 Democrats, 1 Farmer Labor), and a sub-group of the commerce committee failed to decide upon the next step to take. A measure to clarify the Radio Act (H.R.11635), having passed the House on April 30, 1930, and the Senate on February 17, was caught in conference. The question of new legislation on railroad consolidation marked time, but (on the basis of an investigation made by special counsel of the commerce committee under S.Res.290), S.6276 was introduced by Senator Couzens on March 3 in preparation for the new Congress. The measure for Philippine independence (S.3822) died on the Senate calendar.

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Congress was in session, because, under the provisions of the Constitution, the President is the only person who, between sessions, is empowered to call special sessions.

These statements are not the result of theoretical speculation, but rest firmly on the facts of our legislative history. Prior to 1821, no fewer than eighteen acts were passed by Congress appointing a different day for its meetings from that stipulated in the Constitution.[1] Before referring to these acts more in detail, it would perhaps clarify matters somewhat to recall to mind how March 4 was decided upon as a limit of presidential and congressional terms. Article VII of the Constitution provided that the instrument should go into effect when ratified by nine states. This was accomplished on June 21, 1788. In a resolution of September 13, 1788, the Congress of the Confederation, after providing dates for the choice of electors and the election of a president, set the first Wednesday in the following March as the time "for commencing the proceedings under said Constitution." The first Wednesday in March, 1789, fell on March 4. Lack of a quorum until April 6 prevented the counting of the electoral vote, and it was not until April 30 that Washington was inaugurated president.[2] However, Congress decided that both congressional and presidential terms had begun on March 4, 1789, and by act of March 1, 1792, set March 4, 1793, as the date for the beginning of the next presidential term.[3]

The 1st Congress adjourned its first session on September 29, 1789, but before doing so passed an act setting January 4, 1790, as the date of the beginning of its next session.[4] This session ended on August 12, and, no further action being taken, the third session commenced on December 6, 1790, in accordance with the constitutional provision. A number of bills were introduced in the session with respect to the next meeting of Congress, and eventually by act of March 2, 1791, the date was set for the fourth Monday in October, 1791, more than a month before the date provided for in the Constitution.[5] The precedent here established was followed with considerable frequency. The favorite date was the first Monday in November, no less than ten of the eighteen

[1] For a list of these acts, see *Index to United States Statutes, 1789-1851*, p. 226.

[2] The best contemporary account of the inauguration is in the *Journal of William Maclay*, pp. 1-10.

[3] *U. S. Statutes at Large*, I, p. 241.

[4] *Ibid.*, I, p. 96.

[5] *Ibid.*, I, p. 198.

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laws passed prior to 1821 selecting that day. The second, third, and fourth Mondays in November were also chosen, as were the fourth and last Mondays in October. Twice during this period—in 1809 and in 1813—the beginning of the short session was set by law for the fourth Monday in May. It is also worthy of note that nearly half of the acts passed by Congress related to the long session, emphasizing the fact that Congress was concerned not merely with the brevity of the short session. The calling of the first session of a Congress at an earlier date than that set by the Constitution shortened the period between the election of members and their active participation in legislation, thus meeting much of the criticism made against that situation.

Several questions of constitutional interpretation arose in connection with these laws. For example, the act of March 3, 1797, had fixed as the date of the meeting of the 5th Congress the first Monday in November, 1797.[6] But President John Adams called a special session for May 15. When this Congress met, the question was raised whether the act passed at the last session fixing the date of the next meeting of Congress as the first Monday in November had not been superseded by the calling of the special session. Opponents of this interpretation held that although the President had power to call extra sessions, it was the business of Congress to fix the dates of annual meetings, and therefore, the two powers could not be allowed to infringe upon each other. However, in order to avoid any misunderstanding on the subject, a new law was passed fixing the meeting of Congress on the second Monday in November, with a clause repealing the former act. Many members of Congress did not believe the new act was necessary and opposed it on the ground that to take such action would give the President the power to repeal a law and to do away with the provisions of the Constitution of this subject.[7]

The special session called by President Adams met on May 15, and adjourned on July 10, 1797, and the regular session met on November 13, in accordance with the act passed by Congress. But what would happen if a special session called by the President had not completed its business prior to the date set for the next annual session? It was not long before this contingency arose. By the act of March 3, 1803, Congress provided that the next meeting should be on the first Monday

[6] *U. S. Statutes at Large*, I, p. 507.

[7] *Annals of Congress*, 5th Congress, 1st Session, 27, 28, 377, 408; *U. S. Statutes at Large*, I, pp. 525-526.

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of the following November.[8] President Jefferson, however, called the 8th Congress into special session on October 17, and Congress remained in session until March 27, 1804, thus continuing without a break through November 7, the date set by Congress, and through Monday, December 5, the day appointed by the Constitution for the regular annual session.

Nor was this a solitary instance. The first meeting of the 10th Congress was convened by proclamation of President Jefferson on October 26, 1807, and remained in session until April 2, 1808, without any interruption on Monday, December 7, the constitutional day of meeting. The same was true of the 12th Congress, which was convened by proclamation of President Madison on November 4, 1811, and continued in session until July 6, 1812. Again, at the second session of the 13th Congress a law was passed and approved April 18, 1814, setting the last Monday in November of that year for the next meeting of Congress.[9] But a special session was called by President Madison for September 19, 1814, and it, too, continued through the day appointed by law and by the Constitution for the beginning of the session. The reports of proceedings in Congress fail to disclose any discussions of constitutional problems here involved. If there were any questions in the minds of members concerning distinctions between regular sessions of Congress and special ones called by presidential proclamation, presumably they were not raised.

This practice, however, was not allowed to continue, and it was later established that a special session, whether convened by law or by proclamation, ends with the day set by the Constitution for the annual meeting. During the quarrel between Congress and President Johnson, Congress passed an act, approved by the President on January 22, 1867, because he realized his veto would be futile, providing that "in addition to the present regular times of meeting of Congress, there shall be a meeting of the 40th Congress of the United States and of each succeeding Congress thereafter at 12 o'clock meridian, on the 4th day of March, the day on which the term begins for which the Congress is elected.[10] The 40th Congress, convened under this law, was still in session when the day approached for the regular annual meeting. A resolution was passed by both houses that the president of

[8] *U. S. Statutes at Large*, II, p. 242.
[9] *Ibid.*, III, p. 128.
[10] *Ibid.*, XIV, p. 378.

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the Senate and the speaker of the House should adjourn their respective houses without day on Monday, December 2, at twelve o'clock.[11] In accordance with this concurrent resolution, on Monday, December 2, the presiding officers of the two houses declared the houses adjourned *sine die*.[12] Immediately thereafter the houses were called to order in the second session.[13] The act of January 22, 1867, which applied to three Congresses, the 40th, 41st, and 42nd, was repealed April 20, 1871.[14]

On October 15, 1877, the 45th Congress met in special session on the call of President Hayes, and it remained in session until December 3, the day appointed by the Constitution for the regular meeting of Congress. During the morning session on December 3, by concurrent resolution it was resolved to be the judgment of the two houses that the current session of Congress expired by operation of law at twelve o'clock meridian on that day.[15] The two houses then agreed to the usual resolution authorizing the appointment of a joint committee to wait on the President and inform him of the adjournment. At twelve o'clock the new session was called.

The precedent here established was followed in later sessions. In the 58th Congress, President Roosevelt called a special session for November 9, 1903. The House adjourned on Saturday, December 6, but the Senate was still in session on Monday, December 7. At twelve o'clock on that day, the president *pro tempore* of the Senate announced that the hour provided by law for the meeting of the first regular session of the 58th Congress had arrived, and declared the extraordinary session adjourned *sine die*.[16] Immediately the Senate was called to order in regular session, as was also the House, and the second session of the 58th Congress commenced. Almost identical action was taken by the 63rd Congress, when called into special session by President Wilson on April 7, the session continuing to Monday, December 1, when it was adjourned in order that the regular session might commence.[17]

The stand here taken by Congress is an important one in the maintenance of the theory of the separation of powers in our national

[11] *Congressional Globe,* 40th Congress, 1st Session, pp. 798-799.
[12] *Ibid.,* pp. 816, 817.
[13] *Ibid.,* 40th Congress, 2nd Session, Pt. I, pp. 1, 2.
[14] *U. S. Statutes at Large,* XVII, p. 12.
[15] *Congressional Record,* 45th Congress, 1st Session, pp. 814, 816.
[16] *Ibid.,* 58th Congress, 1st Session, p. 544.
[17] *Ibid.,* 63rd Congress, 1st Session, p. 6053.

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government. If no distinction were made between special sessions called by the president and regular sessions provided by the Constitution, and if special sessions were to extend over the date set for regular meetings, the president would be able to exert undue pressure on the legislative branch of the government. On the other hand, the action of Congress in its conflict with President Johnson illustrates the extent of its power to meet practically continuously, provided it has sufficient strength to over-ride the presidential veto.

An attempt of the 24th Congress, in 1836, to fix the date of the annual meeting of Congress on the first Monday in November in every year was vetoed by President Jackson because the same act contained a provision fixing the second Monday of May as the day of adjournment of the first session of all succeeding Congresses. Jackson admitted without question the power of Congress to fix, by law, a day for its regular annual session. But the attempt to set a definite date for the adjournment of all succeeding Congresses he regarded as unconstitutional.[18]

It is interesting to note that, in contrast with the frequent acts of Congress prior to 1821 changing the dates of its meetings, only one law for that purpose has been passed since 1821. This was the act of January 22, 1867, which, as already noted, grew out of Congress' distrust of President Johnson. In recent years, Congress has seemed content to let the President call special sessions rather than exercise its power to change the date of its meetings. Undoubtedly, the development of the party system and of the party leadership of the President has had much to do with the present situation. But the fact remains that Congress has the power to change its times of meeting, just as it did so often in its earlier history. A constitutional amendment is not necessary to enable a newly elected Congress to meet for its first session on, or immediately after, March 4 following its election or to enable Congress to fix the dates of annual sessions. A change in the date of the inauguration of the President or of the beginning of the terms of congressmen would require a constitutional amendment, and it is perhaps the combination of these provisions with the sessions of Congress in the Norris proposals which has obscured somewhat the real power of Congress over the time of its own meetings.

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[18] *Congressional Globe*, 24th Congress, 1st Session, p. 544.

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Methods of Apportionment in Congress. *Introduction.* The apportionment for this decade has now been made by Congress, and a bill has been passed which will automatically provide for reapportionment in all subsequent decades. Under this law, the size of the House will remain 435, and the method of computation will remain the method of major fractions as used in 1911 unless Congress takes the initiative in making a change. It may, however, be a matter of interest to put on record a brief description of the principal "methods" which were under discussion in the recent congressional debates. No knowledge of mathematics is required in order to understand the purpose and result of each of these methods.

The constitutional requirement. The constitutional requirement reads as follows: "Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed; . . . but each state shall have at least one representative." Hence, in a theoretically perfect apportionment, the ratio of representation in any state would be exactly equal to the ratio of representation in every other state. In practice, however, perfect equality cannot be secured, on account of fractions. Hence, in the practical problem of apportioning any given number of representatives among the several states, the only way in which the constitutional requirement can be met is by making the unavoidable inequalities between the states as small as possible.

How the problem of "method" arises. How these inequalities between the states are to be measured mathematically is a problem which has vexed Congress at every decennial apportionment. The ratio of representation which the Constitution intends to be equalized among the several states may be interpreted in two ways. In the first place, the "ratio" in any state may be interpreted to mean the *number of people per representative* in that state (at present about 281,000). In the second place, the "ratio" in any state may be interpreted to mean the *number of representatives per million inhabitants* in that state (at present about 3.56). The second ratio is equivalent to the first ratio inverted.

In a theoretically perfect apportionment, it would, of course, make no difference which interpretation of the ratio is adopted, since in either form the ratio for any state would be exactly equal to the ratio for every other state. But in practice, when we have to compare the value of the ratio in one state with the value of the ratio in another state,

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in order to apportion the representatives in such a way as to make these two values as nearly equal as possible, then it *may* make a difference which interpretation of the "ratio" is adopted.

Congress has tried various methods of getting around this difficulty. The most obvious plan is to compute the exact number of representatives to which each state would be entitled in a theoretically perfect apportionment, and then throw away the fractions less than one-half and add one representative for each fraction greater than one-half. But it has long been known that this plan is mathematically unworkable, because it does not always lead to a definite result. Another method, used from 1850 to 1900, had to be abandoned because it led to a curious situation known as the Alabama paradox. Both these methods were based on the computation of an average value of the "ratio" for the country at large. The method of major fractions, introduced in 1910 and now in use, is based on a quite different principle.

In the recent debates in Congress, the two methods which were most widely discussed were the *method of major fractions* and a new method known as the *method of equal proportions*. The mathematical facts as to the aims and results of these two methods are now well established in mathematical literature. The purpose of the present note is to present, without argument or discussion, and without touching upon any constitutional or political questions, a brief summary of these facts. (The technical details of the process of computation may well be left to the experts in the Bureau of the Census. This technical process is no more complicated in one method than in the other, as is shown by an official statement in the *Congressional Record* for January 30, 1929.

The mathematical facts:

A. If Congress desires to make the *number of people per representative* as nearly uniform as possible among the several states, then it must choose some other method than the method of major fractions; the method of major fractions cannot be relied upon to accomplish this aim. The method of major fractions makes no attempt to equalize the number of people per representative among the several states.

B. If Congress desires to equalize the *number of representatives per million* inhabitants, without regard to the number of people per representative, then it is faced with the necessity of making a choice between the method of major fractions and the method of equal proportions.

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C. If Congress desires to make *both* the number of people per representative *and* the number of representatives per million inhabitants as nearly uniform as possible among the several states, then *the only method which will always accomplish this aim is the method of equal proportions.* (This dual property may be taken as the definition of the method of equal proportions.) If this method is adopted, it is not necessary to determine which form of the "ratio" is the more important, since both forms lead to the same result.

These are the essential mathematical facts in regard to the aims and results of the two methods. None of these facts were available in 1911.

Supplementary notes:

Note 1. For a more detailed account of the whole problem, including a discussion of the constitutional and political aspects of the problem, the short-cut technical processes of computation, and an extensive bibliography, the reader is referred to Professor Z. Chafee, Jr.'s article on "Congressional Reapportionment" in the *Harvard Law Review* for June, 1929. Reference may also be made to the report of the National Academy of Sciences, printed in the *Congressional Record* for March 2 and May 22, 1929. (This report concludes that the method of equal proportions is preferable, not only because it has the dual property mentioned above, but also because among all the known methods of apportionment it "occupies mathematically a neutral position with respect to emphasis on larger and smaller states.")

Note 2. In regard to the number of states which the choice of method might affect, the following statistics may be of interest. In 1920, if an apportionment had been made in that year, six states would have been affected. In 1930, it happened that for a House of 435 members, both methods led to the same result. (This would not have happened for any other size of House up to 472. For sizes near 450, the difference between the two methods would have affected six or eight states.) How the figures will come out in 1940, it is of course impossible to tell until the census populations are known. Under possible distributions of population, the choice of method might conceivably affect a large number of states.

Note 3. Since in the recent debates the choice between the method of equal proportions and the method of major fractions was often referred to as essentially a choice between "relative" and "absolute"

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differences, the following mathematical facts on this point may be of interest:[1]

D. If statement C (above) is adopted as the proper aim or goal of an apportionment, then no decision between "relative" and "absolute" differences is required. The method of equal proportions is completely defined by statement C, without the addition of any further premise. If this statement C is adopted, it follows mathematically that relative differences are to be used.

E. If relative differences are adopted, then no decision between the two forms of the "ratio" is required. (See above). A decision in favor of relative differences would lead directly to the method of equal proportions, without any further premise. There is only one method which can be properly called "the relative difference method."

F. On the other hand, if absolute differences are adopted, then a further decision is required between the two forms of the "ratio." A decision in favor of absolute differences, taken by itself, would lead to a dilemma, since there is no definite method which can be called "the absolute difference method." There are two "absolute difference methods," depending on which form of the ratio is adopted. One of these "absolute difference methods" is the method of major fractions, while the other may be called the converse of the method of major fractions. Mathematically, the aims of these two methods are precisely parallel, and there is no mathematical ground on which either can be preferred over the other. The method of equal proportions occupies a middle position between the two "absolute difference methods," and completely avoids the dilemma which they present.

When the method of major fractions was introduced in 1911, all the emphasis was laid on the technical process of computation, no attempt being made to measure the resulting inequalities between the states. At that time, no adequate tests of the final result of an apportionment were available. Concerning the final result, as distinguished from the technical process of computation, the following mathematical facts are now known:

G. In order to defend the result of the method of major fractions on scientific grounds, two premisees are required: (1) absolute differences; and (2) the exclusive use of the second form of the ratio.

[1] To find the relative, or percentage, difference between two numbers, divide the larger by the smaller, and note the excess over unity. For example, the relative difference between 300,000 and 240,000 is 25 per cent (since $300{,}000 \div 240{,}000 = 1.25$).

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H. Similarly, in order to defend the result of the "converse" method, the following two premises are required: (1) absolute differences; and (2) the exclusive use of the first form of the ratio.

I. On the other hand, in order to defend the result of the method of equal proportions, only one premise is required; and this premise can be stated in either of two ways: (1) In the first place, it is sufficient to establish the single premise that neither form of the "ratio" should be excluded from recognition; or (2) it is sufficient to establish the single premise that relative differences are to be preferred. If either of these two premisees is granted, the other will necessarily follow. And by the same token, if the method of equal proportions is to be successfully attacked, not one but both of these premises must be overthrown.

As explained above, it is not the purpose of the present paper to argue the case for or against any of the three methods. The purpose has been merely to present, as briefly as possible, the mathematical limitations within which all such arguments must necessarily proceed.

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Mr. Justice Brandeis: Exponent of Social Intelligence. It is common observation that progress in social sciences has not kept pace with mastery of natural sciences; that ability to deal effectively with modern industrial life offers a very poor parallel to the expertness with which scientific questions are considered. There are perhaps two explanations.

First, research in mechanical, chemical, and electrical science has yielded, as by-products, a vast crop of new problems in human affairs.[1] While invention and discovery created the possibility of releasing men and women from the thralldom of drudgery, new dangers to liberty appeared with the introduction of the factory system and the development of the business corporation. Large publicly owned corporations replaced small privately owned concerns; ownership of the instruments of production passed from the workman to the employer; personal relations between the proprietor and his help ceased. The individual contract of service lost its character because of inequality between employer and employee. Group relation of employee to em-

[1] For an exhaustive examination of this subject, see *Report of the Committee on Recent Economic Changes*, 2 vols. (N.Y., McGraw-Hill, 1929).

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ployer, with collective bargaining, became common; indeed it was, in the opinion of some, absolutely essential to the worker's protection. These changes, in turn, called for ever-increasing governmental regulation. One result has been to emphasize anew the essential unity of economics, politics, and law.

Second, progress in dealing with social matters has not kept pace simply because few men of talent and ability have bent their efforts to this field. It would be difficult indeed to point to any contributions to social research that begin to compare with those made by Steinmetz, Michelson, Millikan, Pasteur, and many others in the scientific field.[2] Even seemingly elementary questions are still calling for solution. Is machine production, which tends more and more to exceed the possibilities of reasonable consumption, and to flood the world with goods for which there is not sufficient demand, to be restricted? If so, how? Why is our economic and political machinery so clumsy and inefficient that men are permitted to go hungry in the cities while wheat is being fed to hogs in the West? Why are factories closed when so large a percentage of the human race is undernourished, underclothed, and clamoring for jobs? Should unemployment be left to the hard settlement of supply and demand, or are unemployment insurance and the dole to be recognized and established by law as necessary features of the new world economy? Why, in the midst of so many labor-saving devices, is there so little leisure for the workers? How, in short, can men be taught to think more about human welfare and less about property and vested interests? How can the economics of production and distribution be reorganized so that everybody will have more of the good things of life and less of poverty, misery, and distress? It is certainly an extraordinary and challenging fact that our parents, with comparatively few of the conveniences and labor-saving devices that are ours, were nevertheless more contented, peaceful, and secure.

Living in such a period as this, Mr. Louis D. Brandeis emphasized

[2] Recently, some very noteworthy studies have been made in the attempt to grapple with our social and economic ills. Among the best are: Norman Thomas, *America's Way Out; A Program for Democracy* (N.Y., Macmillan, 1931); Sir George Paish, *The Way to Recovery* (N.Y., Putnam, 1931); Paul H. Douglas and Aaron Director, *The Problem of Unemployment* (N.Y., Macmillan, 1931); Stuart Chase, *The Nemesis of American Business; and Other Essays* (N.Y., Macmillan, 1931); W. B. Donham, *Business Adrift* (N.Y., McGraw-Hill, 1931); P. T. Moon, ed., *Depression and Revival* (Proceedings of Academy of Political Science, N.Y., 1931; R. T. Ely, *Hard Times—The Way In and the Way Out* (N.Y., Macmillan, 1931).

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long before he became a member of the Supreme Court the need for social and economic intelligence: "We are sure," he said in 1911, "to have for the next generation an ever-increasing contest between those who have and those who have not. There are vital problems to be solved. And for those we need our ablest men. The reason why we have not made more progress in social matters is that these problems have not been tackled by the practical men of ability, like those who have worked on industrial inventions and enterprises. We need social inventions, each of the many able men adding his work, until the invention is perfected."[3]

That Mr. Brandeis himself did not shirk this responsibility cannot be questioned.[4] There was hardly a phase of social, economic, and industrial life to which he did not turn his hand—labor, trusts, railroads, insurance, and finance are but part. Hence he brought to the Supreme Court an unequalled wealth of experience in dealing with such matters, and out of this he had already framed a definite set of social and economic ideas.

Modern industrial society, as Mr. Brandeis sees it, is essentially a "contest between those who have and those who have not."[5] The day of the entrepreneur is past. No longer can the American boy look forward to becoming independent in his own shop or on his own land. The United States has become largely a nation of employees, and the most significant consequence of the industrial revolution was to create for most men this status of employeeship.

Huge profits and numerous advantages had, it is true, resulted from the introduction of machinery; but these gains had, from a social point of view, been largely dissipated; for the employers, instead of raising the standard of civilization generally, had appropriated to themselves the greater part of the profits. The effect was a new kind of despotism; economic absolutism replaced what was formerly social absolutism. Politically, the American workman is said to be free; economically, he is a neglected serf. The inconsistency and injustice of this situation is, in the opinion of Mr. Brandeis, patent enough, and cannot long continue. His words express conviction:

[3] Recorded by Ernest Poole from an interview with Mr. Brandeis. *American Magazine*, LXXI, 481, 493.

[4] See the present writer's article, "Mr. Justice Brandeis: A Student of Social and Economic Science," *University of Pennsylvania Law Review*, LXXIX (April, 1931).

[5] Poole, *op. cit.*, p. 492.

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"There is felt today very widely the inconsistency in this condition of political democracy and industrial absolutism. The people are beginning to doubt whether in the long run democracy and absolutism can coëxist in the same community; beginning to doubt whether there is a justification for the great inequalities in the distribution of wealth, for the rapid creation of fortunes, more mysterious than the deeds of Aladdin's lamp. The people have begun to think; and they show evidences on all sides of a tendency to act."[6]

Mr. Brandeis was concerned lest the movement take the form of violence. He was therefore driven to seek remedies. Realizing that the profits from the machine had already been largely absorbed by the speculations of capital, he looked to improvements in another direction to benefit the employees, and so sponsored his well-known principles of scientific management.[7] The application of these principles, he believed, is capable of producing economies in production comparable to those effected by the transition from hand to machine labor. The purpose of scientific management is not merely to conserve human effort but to secure greater profit, a large part of which, Brandeis argues, should go to the workers. "If the fruits of scientific management are directed into the proper channels, the workingman will get not only a fair share, but a very large share, of the additional profits arising from improved industry."[8]

But labor cannot be expected to get its just due save by organized

[6] Brandeis, *Business—A Profession* (1925), p. 326.

[7] The following is Brandeis' statement of these principles: "Under scientific management the employee is enabled to earn without greater strain upon his vitality from twenty-five to sixty per cent, and at times even one hundred per cent, more than under the old system. The larger wages are made possible by larger production; but this gain in production is not attained by 'speeding up.' It comes largely from removing the obstacles to production which annoy and exhaust the workman—obstacles for which he is not, or should not be made, responsible. The management sees to it that his machine is always in perfect order. The management sees to it that he is always supplied with the necessary materials. The management sees to it that the work comes to him at proper times, with proper instructions and in proper condition. The management sees to it that he is shown the best possible way of doing the job; that is, the way which takes least time, which takes least effort, and which produces the best result." From brief introduced at Interstate Commerce Commission hearing, January 3, 1911. Reprinted in Brandeis, *Scientific Management and the Railroads* (1911), p. 91. See also F. B. Gilbreth, *Primer of Scientific Management* (1914), Introduction by Louis D. Brandeis.

[8] Brandeis, *Business—A Profession*, p. 49.

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effort. Therefore he favors unionism and collective bargaining. He insists that unions must participate in fixing wages, hours, and conditions, and in determining the application to various businesses of the principles of scientific management. "There will be in most trades little probability of attaining the best conceivable conditions unless in some form a union of employees exist. . . . Peace and prosperity . . . are not to be attained by any attempt to weaken trade unions. Our hope lies rather in their growing strength and stability."[9]

But the interests of wage-earners cannot be cared for by labor unions alone; nor is sporadic, emotional charity to be depended upon. Financial dependence being due, as it frequently is, to sickness, accident, invalidity, superannuation, unemployment, or premature death of the bread winners of the family, the community, more particularly the employers, must bear the burden of supporting needy wage-earners without reference to the cause of their inability to support themselves.[10] Workmen's compensation legislation had already made clear the need for a comprehensive system extending protection to the wage-earners against financial dependence. The tenor of his argument may be gleaned from the following: "Everybody recognizes the first insurance premium as a current expense. And yet the chance of loss by fire is very slight as compared with the chance of loss of earnings by sickness, accident, or premature death. Every intelligent manufacturer makes in some form a regular charge for depreciation of machinery and plant. And yet the depreciation of man through invalidity and superannuation is no less certain, and frequently more severe, than the

[9] Brandeis, *Business—A Profession*, pp. 18, 20.

[10] "From the point of view of the workingman, the expense of providing old age pensions is a part of the daily cost of living. He should contribute while able to work to a fund which will sustain him when he ceases to earn. From the point of view of the employer, the expense of providing old age pensions is a part of the current expense of his business. He should pay as he goes the accruing cost of retiring employees who will become superannuated. . . . Every pension system should be contributory and coöperative; that is, the cost should be borne partly by the employer and partly by the employee, and preferably in equal shares." *Independent*, LXXIII, pp. 188, 191 (1912). Regardless of the party on whom the burden falls, Brandeis is sure that superannuation should be considered as a depreciation charge, and argued that the wage-earner must be protected in whosesoever employ he may happen to be when he reaches the period of superannuation. Any pension system that really protects, he insists, must confer upon the worker an absolute right. He characterized the system of discretionary pensions as "new peonage." *Ibid.*, p. 187.

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depreciation of machinery. Every intelligent manufacturer recognizes rent, interest, and taxes as current daily charges which continue although his plant is shut down or operates at less than full capacity. The manufacturer makes allowance for this in calculating the cost of production as an extra charge to be met from the earnings of active days. But the cost to the employer of carrying an unused plant is not as great relatively as the cost to the employee of carrying himself and family while unemployed. The manufacturer who fails to recognize fire insurance, depreciation, interest, and taxes as current charges of the business treads the path of bankruptcy. And that nation does the like which fails to recognize and provide against the economic, social, and political conditions which impose upon the workingman so large a degree of financial dependence.''[11]

Irregularity of employment, Mr. Brandeis feels, is not only the worst but an ever-present social and industrial ill. ''Even in fairly prosperous times, the workingmen of America are subjected to enforced idleness and loss of earnings, on the average, probably ten to twenty per cent of the working time.''[12] Some irregularity in employment, he admits, is inevitable. But he insists that, for the most part, its is remediable. ''In scientifically managed business irregularity tends to disappear. So far as it is irremediable it should be,'' he argues, ''compensated for like the inevitable accident.''[13]

Brandeis fully appreciates the high cost of the assumption of such large social responsibilities. But, he tells us: ''The cost of attaining freedom is usually high, and the cost of providing for the workingman, as an essential to freedom, a comprehensive system of insurance will prove to be no exception to this general rule. But, however large the cost, it should be fairly faced and courageously met. For the expense of securing indemnity against financial losses attending accident, sickness, invalidity, premature death, superannuation, and unemployment should be recognized as a part of the daily cost of living, like the more immediate demands for rent, for food, and for clothing. So far as it is a necessary charge, it should be met now as

[11] Brandeis, *Business—A Profession*, pp. 54-55.

[12] *Ibid.*, pp. 6-7.

[13] *Ibid.*, p. 61. ''The reserve to ensure regularity of employment is as imperative as the reserve for depreciation; and it is equally a part of the fixed charges to make the annual contribution to that reserve. No business is socially solvent which cannot do so.'' Quoted in *Survey* LX, p. 5. (April 1, 1929).

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a current expense, instead of being allowed to accumulate as a debt with compound interest to plague us hereafter.''[14]

As an explanation of the cause for our social and industrial unrest (which he characterized as ''reasoned'' and ''well-founded''),[15] Mr. Brandeis points first to the fact that workers have been denied their proper share of the profits.[16] But the problem, in Mr. Brandeis' opinion, is deep-seated and its solution far-reaching. No real solution, nor even an approximation of a solution, of unrest can be reached ''as long as there exists in this country any juxtaposition of political democracy and industrial absolutism. . . . Before we can really solve the problem of industrial unrest, the worker must have a part in the responsibility and management of the business, and whether we adopt scientific management, or adopt any other form of obtaining compensation or of increasing productivity, unrest will not be removed as long as we have that inconsistency.''[17]

Mr. Brandeis, in short, is an ardent advocate of industrial democracy. A champion of industrial democracy, he rejects those schemes that are so frequently offered in its name. He does not consider, for example, ''the holding of stock by employees—what is practically almost an insignificant participation, considering their proportion to the whole body of stockholders in large corporations—improves the condition of labor in those corporations. . . . Its effect,'' he believes, ''is rather the opposite.''[18] Nor does profit-sharing, however liberal,

[14] *Business—A Profession*, p. 54.

[15] Statement before a Senate committee hearing on trust legislation, Dec. 14, 1911. Reprinted in Alfred Lief, *The Social and Economic Views of Mr. Justice Brandeis* (1930), p. 374.

[16] ''Those who do the work [should] get in some fair proportion what they produce. The share to which capital as such is entitled is small. All the rest should go to those, high and low, who do the work.'' *Ibid.*, p. 374. By workers, Brandeis meant managers, skilled handicraftsmen, and day-laborers.

[17] For an extended and excellent statement of his position on this subject, see Brandeis' testimony before the United States Industrial Commission on Industrial Relations, 64th Cong., 1st Sess., 1915-16, Sen. Doc., Vol. 26, p. 7659 *et. seq.*

[18] *Ibid.*, p. 7659. ''A wide distribution of stock, instead of being a blessing, constitutes, to my mind, one of the gravest dangers to the community. It is absentee landlordism of the worst kind. . . . Such a wide distribution of the stock dissipates altogether the responsibility of stockholders, particularly of those with five shares, ten shares, fifteen shares, or fifty shares. They recognize that they have no influence in a corporation of hundreds of millions of dollars capital. Consequently they consider it immaterial whatever they do, or omit to do; the net result is that the men who are in control, it is almost impossible to dislodge, unless

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entirely meet the situation. "That would merely mean dividing the profits of business. Such a division may do harm or it might do good, dependent on how it is applied."[19] To achieve industrial democracy, much more is necessary. It demands that "the problem of trade should not longer be the problems of the employer alone. The problems of his business, and it is not the employer's business alone, are the problems of all in it. The union cannot shift upon the employer the responsibility for conditions, nor can the employer insist upon determining, according to his will, the conditions which shall exist. The problems which exist are the problems of the trade; they are the problems of employer and employee. . . . There must be a division, not only of profits, but a division also of responsibilities. The employees must have the opportunity of participating in the decision as to what shall be their condition and how the business shall be run. . . ."[20] Industrial democracy will not come by gift. It has got to be won by those who desire it. And if the situation is such that a voluntary organization like a labor union is powerless to bring about the democratization of a business, I think we have in this fact some proof that the employing organization is larger than is consistent with the public interest. . . . And the state must in some way come to the aid of the workingmen if democratization is to be secured."[21]

Mr. Brandeis almost makes one feel that our present wage system is worse than the servile system of a century ago.[22] Under the latter,

there should be such a scandal in the corporation as to make it clearly necessary for the people on the outside to combine for self-protection." *Ibid.*, p. 7661. Any one conversant with the facts in connection with the recent controversy in the Bethlehem Steel Corporation will appreciate the truth of this statement.

[19] *Ibid.*, p. 7660.

[20] *Ibid.*

[21] *Ibid.*, p. 7662. He points out, for instance, that many states "have, in aid of industrial liberty, prohibited the employers from making it a condition not to join a labor union. It may become necessary to apply a similar prohibition against features in private pension schemes which have a tendency to unduly abridge the liberty of the individual workingman." Brandeis, *Business—A Profession*, p. 77.

[22] See his statement before the House committee hearings on investigation of the United States Steel Corporation, Jan. 29, 1912, p. 2842 ff. "While this corporation [U. S. Steel] is the greatest example of a combination, the most conspicuous instance of combination of capital in the world, it has . . . undertaken, and undertaken successfully, to deny the right of combination to the workingmen, and these horrible conditions of labor, which are a disgrace to America, considering the wealth which has surrounded and flown out of this industry, are the result of

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the employer had to feed, clothe, and house his slaves whether he needed their services or not. Under the wage system, the employer pays only for such services as he needs and actually receives. This gives point to Mr. Brandeis' observation that "politically, the American workman is free so far as law can make him so. But is he really free? Can any man be free who is constantly in danger of becoming dependent for mere subsistence upon somebody and something else than his own exertion and conduct? Men are not free while financially dependent upon the will of other individuals. Financial dependence is consistent with freedom only where claim to support rests upon right, and not upon favor."[23]

Another aspect of our industrial system has attracted the attention of Mr. Brandeis. He observed the increasing tendency of business concerns to grow bigger and bigger, and to fall under the control of a smaller number of persons. Trusts and monopolies were for him objects of grave suspicion: first, because he had demonstrated that a point is reached in the growth of industry where "bigness" no longer makes for efficiency; he destroyed, in other words, the common delusion that efficiency is a necessary incident to size.[24] Second, because so-called "big business" runs counter to his cherished principles of

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having killed or eliminated from the steel industry unionism. All the power of capital and all the ability and intelligence of the men who wield and who serve the capital have been used to make practically slaves of these operatives, because it does not mean merely in respect to the way in which they have lived, but the very worst part of all this is the repression. It is a condition of repression, of slavery in the real sense of the word, which is alien to American conditions." *Ibid.*, p. 2856.

[23] Brandeis, *Business—A Profession*, p. 53.

[24] "When . . . you increase your business to a very great extent, and the multitude of problems increase with its growth, you will find, in the first place, that the man at the head has a diminishing knowledge of the facts and, in the second place, a diminishing opportunity of exercising a careful judgment upon them. Furthermore—and this is one of the most important grounds of inefficiency of large institutions—there develops a centrifugal force greater than the centripetal force. Demoralization sets in; a condition of lessened efficiency presents itself. . . . These are disadvantages that attend bigness." Then follows a detailed examination of the records of numerous trusts. Hearings before the Committee on Interstate Commerce on the Control of Corporations, Persons, and Firms Engaged in Interstate Commerce. 62nd Cong., 2d Sess., S. Res. 98, Vol. I, p. 1147 *et seq.* (1912). See also Brandeis, *Other People's Money and How the Bankers Use It* (1914), p. 162.

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industrial democracy.[25] He was especially apprehensive of monopolistic control in the field of public utilities. Here his concern was for the interest not merely of the employees, but of the public. He argued that the relations of the utilities and the public should be adjusted upon principles of prudent investment, efficient capitalization, scientific management, and fair earnings equally shared with the public under the sliding-scale principle.

To secure freedom and independence against all these modern forms of oppression, government itself must intervene. Brandeis foresaw and advocated increased governmental regulation and control. "I can see that the tendency is steadily toward governmental control. The government must keep order not only physically but socially. In old times the law was meant to protect each citizen from oppression by physical force. But we have passed to a subtler civilization; from oppression by force we have come to oppression in other ways. And the law must still protect a man from the things that rob him of his freedom, whether the oppressing force be physical or of a subtler kind."[26]

Accordingly, he argued that property, although a necessary institution, should never be regarded as an end in itself, but as a means of promoting human freedom. When, therefore, "property is used to interfere with that fundamental freedom of life for which property is only a means, then property must be controlled. This applies to the regulation of trusts and railroads, public utilities, and all big industries that control the necessities of life. Laws regulating them, far from being infringements on liberty, are in reality protections against infringements on liberty."[27]

[25] "The grave objection to the large business is that, almost inevitably, the form of organization, the absentee stockholdings, and its remote directorship prevent participation, ordinarily, of the employees in such management. The executive officials become stewards in charge of the details of the operation of the business, they alone coming into direct relation with labor. Thus we lose that necessary coöperation which naturally flows from contact between employers and employees—and which American aspirations for democracy demand. It is in the resultant absolutism that you will find the fundamental cause of prevailing unrest; no matter what is done with the superstructure, no matter how it may be improved in one way or the other, unless we eradicate that fundamental difficulty, unrest will not only continue, but, in my opinion, will grow worse." Statement before the United States Industrial Commission on Industrial Relations, 64th Cong., 1st Sess., 1915-16, Sen. Doc., Vol. 26, p. 7660.

[26] Poole, *op. cit.*, p. 492. [27] *Ibid.*, p. 493.

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As already shown, he warmly advocated various forms of social legislation, including the minimum wage,[28] believing that "if society and industry and the individual [workman] were made to pay from day to day the actual cost of the sickness, accident, invalidity, premature death, or old age consequent upon excessive hours of labor, unhygienic conditions of work, unnecessary risks, and irregularity of employment, those evils would be rapidly reduced."[29] He also favored legislation in aid of trade unions in order to secure greater equality of bargaining power between employer and employee, to the end that industry might be democratized. He observed inequality, too, between great corporations, with huge resources, and the small competitor, and argued that government must be prepared to lend its aid in behalf of the latter to prevent oppression and injustice.[30]

In short, according to Mr. Brandeis, we are living in a day when the primary need of the great masses is not so much political emancipation as industrial liberty and freedom. He well understands that liberty is not a thing to be conferred. Rather, he is eager to establish conditions which will enable the individual to develop his power, to enjoy the health, time, and wherewithal really to live, rather than merely to subsist. For this the individual needs financial independence, leisure, and education for mental development.

No materialist, Mr. Brandeis, through choice, has devoted his own life chiefly to questions of large public interest. "I have only one life, and it's short enough. Why waste it on things that I don't want most? And I don't want money or property most. I want to be free."[31]

[28] On the subject of minimum legislation, he said: "I am unable to see that there is any difference in principle between a minimum wage law and a law governing the hours of labor, or a factory safety law or a child labor law or any of the other laws of this character. We set out with the principle, the fundamental policy not only in the Constitution, but as the fundamental policy of the Anglo-American people, that liberty should not be restricted except in so far as required for the public welfare, health, safety, morals, and general public conditions. . . . The liberty of each individual must be limited in such a way that it leaves to others the possibility of individual liberty, the right to develop must be subject to that limitation which gives everybody else the right to develop; the restriction is merely an adjustment of the relations of one individual to another." From a statement before the New York Factory Investigating Commission, Jan. 22, 1915, Vol. V, pp. 2880-2881.

[29] Brandeis, *Business—A Profession*, p. 70.

[30] See Brandeis' statement before House committee hearings on interstate and foreign commerce, 63rd Cong., 2nd. Sess., Jan. 31, 1914, p. 4.

[31] Quoted by Poole, *op. cit.*, p. 493.

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Dissenting sharply from the materialism of Samuel Gompers, and subscribing rather to the philosophy of Plato and Aristotle, he wrote in 1916: "Undoubtedly 'a full dinner pail' is a great achievement as compared with an empty one, but no people ever did or ever can attain a worthy civilization by the satisfaction merely of material needs, however high these needs are raised. The American standard of living demands not only a high minimum wage, but a high minimum of leisure, because we must meet, also, needs other than material ones."[32]

Leisure is necessary not merely for the sake of individual development: "We need leisure, among other reasons, because with us every man is of the ruling class. Our education and conditions of life must be such as become a ruler. Our great beneficent experiment in democracy will fail unless the people, our rulers, are developed in character and intelligence. . . . The educational standard required of democracy is obviously high. The citizen should be able to comprehend, among other things, the many great and difficult problems of industry, commerce, and finance, which with us necessarily become political questions."[33] Thus for Mr. Brandeis democracy is at best a noble experiment, and the conditions under which it will succeed are most exacting.

Mr. Brandeis realized in 1916 that government must play a leading rôle in the achievement of the kind of state which he envisaged; that the law as hitherto administered had failed to meet contemporary social and economic needs. "Political as well as economic science," he observes, "noted these revolutionary changes. But legal science—the unwritten or judge-made laws as distinguished from legislation—was largely deaf and blind to them. Courts continued to ignore newly arisen social needs. They applied complacently eighteenth-century conceptions of the liberty of the individual and of the sacredness of private property. . . . Where statutes giving expression to the new social spirit were clearly constitutional judges, imbued with the relentless spirit of individualism, often construed them away."[34]

The Constitution, Mr. Justice Brandeis contends, does not necessarily stand in the way of social and economic progress: "I see no need," he said, "to amend our Constitution. It has not lost its capacity

[32] Brandeis, *Business—A Profession*, p. 29.
[33] *Ibid.*, p. 32.
[34] Brandeis, "The Living Law," *Illinois Law Review*, X, p. 461.

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for expansion to meet new conditions, unless interpreted by rigid minds which have no such capacity. Instead of amending the Constitution, I would amend men's economic and social ideas. . . . What we must do in America is not to attack our judges but to educate them." Law being a narrowing, conservatizing profession, Mr. Brandeis advised "study undertaken preparatory to practice—and continued by lawyers and judges throughout life: study of economics and sociology and politics which embody the facts and present the problems of today."[35]

Law for Mr. Brandeis is no mere embodiment of an arbitrary set of *a priori* abstractions existing in a vacuum; rather, law is essentially an instrument of social policy. Knowledge of it does not consist simply in the logical consistency of its rules. There is still the need for acquaintance with the economic and social facts within which the law operates. He emphasized the truth of the old maxim of the Civilians —*ex facto jus oritur*. Out of the facts grows the law; that is, propositions should never be considered abstractly, but always with reference to facts. "No law," he argued, "written or unwritten, can be understood without full knowledge of the facts out of which it arises, and to which it is to be applied."[36] Contrasting his own method of treating constitutional questions with that generally followed by the court, he observed: "In the past the courts have reached their conclusions largely deductively from preconceived notions and precedents. The method I have tried to employ in arguing cases before them has been inductive reasoning from the facts."[37]

Despite such preference, it may, I think, be fairly concluded that fundamentally, Mr. Brandeis is an idealist, not always entirely objective, seldom without a liberal bias regarding the social and economic questions with which he has to deal. His vision is of an ideal state wherein tyranny, political and industrial, is abolished. His contention that he has no rigid social philosophy is in a sense true. He is essentially a social scientist. Hence by reason of the subject-matter of his interest, problems for him are never solved but always in process of solution. New inventions, unforeseen emergencies, and various other factors give rise to new difficulties and call for a different method of approach.

[35] Poole, *op. cit.*, p. 493.

[36] Brandeis, *Business—A Profession*, p. 316. See also his dissenting opinion in Adams v. Tanner, 244 U.S. 590, 597 (1917).

[37] Poole, *op. cit.*, p. 493.

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Although usually coupled with Mr. Justice Holmes in any discussion of Supreme Court personnel, Mr. Justice Brandeis singularly differs from Holmes both in judicial attitude and in his approach to questions of social policy. In most quarters, Mr. Justice Holmes is still given credit for being a liberal; yet he himself has never, so far as I know, pretended to be anything other than a constitutional skeptic. Indeed, he has frequently taken particular care to say that he is entirely indifferent to the actual merits of legislative experimentation in social and economic affairs.[38] Mr. Justice Brandeis, on the other hand, has demonstrated both on and off the bench that he is a genuine liberal. He is an avowed partisan of the common man; his special concern is for those who are economically and financially dependent upon others for livelihood; he prefers human welfare to property rights. Highly sensitive to present-day economic and social ills, he could never remain aloof and indifferent as is the habit of Mr. Justice Holmes; he seeks the cause of abuses, and examines the merit of proposed remedies. He is essentially an advocate, in other words, whether he happens to be writing a brief or a judicial opinion.

Mr. Justice Brandeis always prefers facts to dialectic. Indeed, his famous briefs prepared prior to his Supreme Court appointment dealt in such a way with social and economic problems as to suggest in the minds of certain writers an entirely new method in constitutional exegesis. The truth is, however, that his briefs hardly amount to more than substantial proof of some of the more obvious facts of modern industrial life.[39] That legislation forbidding women to work more than eight hours a day or accept less than minimum wages, that statutes regulating labor contracts between employees and corporations, serve to enlarge, not restrict, liberty and freedom of contract, hardly need support by facts and statistics. Nevertheless, we have had not a few

[38] For stimulating comments, see H. L. Mencken, *American Mercury,* XX, p. 122; W. H. Hamilton, "The Legal Philosophy of Justices Holmes and Brandeis," *Current History,* XXXIII, p. 654; Norman Hapgood, "Justice Brandeis: Apostle of Freedom," *Nation,* CXXV, p. 330; review of Lief's *Social and Economic Views of Mr. Justice Brandeis,* by Judge Joseph C. Hutcheson, Jr., *Yale Law Journal,* XV, May, 1931; J. P. Pollard, "Justice Brandeis and the Constitution," *Scribner's Magazine,* LXXXVII, p. 11.

[39] For an interesting statement of the right of the court to take judicial notice of such facts, see Brandeis' testimony in hearings before the House committee on interstate and foreign commerce, 63rd Cong., 2nd Sess., Feb. 4, 1914, p. 106ff.

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judicial decisions as evidence that certain judges honestly believed that such was not the case.

As a member of the Supreme Court, Mr. Justice Brandeis, therefore, continues to resort to these fact-finding agencies. Counsel frequently fail to make such presentation of the case as satisfies him, so he proceeds to first-hand study of the facts on his own account. In his opinions are assembled a formidable array of social data and statistics concerning every conceivable aspect of the problem involved. As in his briefs, so in his opinions, legal argument and judicial precedent play a comparatively small rôle; facts and figures predominate. His task as judge does not consist merely in demonstrating the legal validity of the legislation in question; its social desirability must also be examined and proved. Whether the issue be workmen's compensation, collective bargaining, employment agencies, or methods of determining depreciation for rate-making purposes, a correct decision, he holds, can be reached only by exhaustive resort to facts.

Writing when economic, social, and political affairs were far less complex and baffling than today, Mr. Brandeis emphasized the urgent need for social intelligence. But he did more: He made a diagnosis of some of the outstanding social and economic ills from which society is still suffering; he suggested remedies which he felt would aid recovery. He went further, even, and strongly implied that unless society radically alters its point of view and habits of life, that which appears a lingering disease may terminate fatally. It is too bad that, amid the challenging facts seen and studied by Mr. Brandeis, the statistical-psychological group of political scientists—one of our most energetic intellectual soviets—has seen fit to bury its collective head in the sand of so-called problems, many of which are either insoluble, irrelevant, or immaterial. It is Brandeis' leadership that they might better be following.

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JUDICIAL ORGANIZATION AND PROCEDURE

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Felony Trials Without a Jury. Recent crime surveys have shown that the majority of contested felony cases are never tried in open court, being settled instead by the striking of a "bargain" between the defendant and the prosecuting officer. Administrative discretion has thus largely supplanted judge and jury alike. The practice has been severely criticized by Professor Moley, who characterizes it as "psychologically more akin to a game of poker than to a process of justice," being "an attempt to get as much as possible from an unwilling giver" rather than "a search for truth."[1] In view of the technicalities and delay that were permitted to develop in connection with jury trials, the utilization of some such avenue of escape would seem to have been inevitable. The practice may be expected to develop still further unless judicial procedure is improved to a point where a trial becomes an efficient means of disposing of contested criminal cases.

In most jurisdictions, the only alternative to such a compromise agreement has been a jury trial. Trial by a judge alone, the right to a jury being waived, has been regarded as of doubtful constitutionality. Recent decisions of the federal Supreme Court[2] and of the supreme court of Illinois,[3] sustaining such non-jury trials even in the absence of statutory authorization, have gone far toward dispelling this doubt,

[1] Raymond Moley, *Politics and Criminal Prosecution* (1929), p. 189. Chapters 7 and 8 contain an excellent discussion of this phase of the subject, which is beyond the scope of the present note. The recent Al Capone fiasco in the federal district court sitting in Chicago shows the methods employed, and also illustrates the manner in which such compromise agreements occasionally fall through because the judge refuses to coöperate with the prosecution. See *infra*, pp. 8, 10.

[2] Patton v. United States (1930), 281 U.S. 276, 50 S. Ct. 253. Although this was not a true waiver case, the facts having been found by a jury of eleven men, the opinion states that we "must treat both forms of waiver as in substance amounting to the same thing." But *cf.* Commonwealth v. Hall (1928), 291 Pa. 341, 140 A. 626, 58 A. L. R. 1023. I discuss this conflict of opinion, together with the other constitutional and statutory problems involved in the non-jury trial of felony cases, in an article which is to appear in the *California Law Review* for January, 1932.

[3] People v. Fisher (1930), 340 Ill. 250, 172 N.E. 722.

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and warrant an examination of the practical working of the waiver plan in those jurisdictions where it has been given a trial. In seven states[4] the practice of allowing such a waiver is of sufficient maturity to justify drawing rather definite conclusions, and the developments thus far in the courts of the federal government and of seven other states[5] which have adopted the practice within the last five years furnish evidence of what may be expected in the future.

Frequency of Waiver: State Courts. There is the greatest divergence as to the frequency with which advantage is taken of the right to dispense with a jury trial upon a plea of "not guilty" of felony. In Connecticut,[6] Maryland,[7] and Wisconsin,[8] trial by the court has be-

[4] Connecticut (1921), *Acts* 1921, c. 267, s. 2; Indiana (1905), *Burns' Anno. Stat.* 1926, s. 2299; Maryland (1852), *Code* 1924, art. xxvii, s. 549; New Jersey (1898), *Comp. Stat.* 1910, s. 13; Oklahoma (1911), Cowden v. State, 5 Okl. Cr. 71, reversing In re McQuown (1907), 19 Okl. 347, 91 P. 681, and holding that art. vii, s. 20 of the constitution of 1907 applies to criminal as well as civil cases; Washington (Territorial Act), *Remington's Comp. Stat.*, 1922, s. 2144; Wisconsin (1925), *Laws* 1925, c. 124, s. 1. Special acts authorizing waiver in various Wisconsin counties, except in capital cases, date from 1881. For the Maryland practice of waiving a jury at common law, see Carroll T. Bond, "The Maryland Practice of Trying Criminal Cases by Judges Alone, Without Juries," in 11 *Amer. Bar Assoc. Jour.* 699 (1925), and Judicial Council of Massachusetts, *First Report* (1925), p. 97. Only the Washington law excepts capital cases. Connecticut, *Acts* 1927, c. 107, provides that such cases shall be tried by a bench of three judges. In Oklahoma, the prosecuting attorney, and in Indiana the court as well, must consent to such a waiver before it can become effective.

[5] California (1928), Constitution, art. 1, s. 7; Illinois (1930), People v. Fisher, *op. cit., supra* note 2; Massachusetts (1929), *Gen. Laws*, c. 263, s. 6; Michigan (1927), *Acts* 1927, pp. 284, 318; Ohio (1929), *Code* 1930, ss. 13442-4, 13442-5; Rhode Island (1929), *Gen. Laws*, c. 407, s. 78; Virginia (1928), Constitution, art. i, s. 8. Massachusetts excepts capital cases. In Rhode Island the consent of the court, and in Virginia of the prosecuting attorney as well, is required.

[6] Lucius P. Fuller, clerk of the superior court for Hartford county, writes that "the jury is waived in probably more than three-fourths of the cases which are tried." Letter dated May 12, 1931. From Waterbury comes news that "nearly half of our cases are now tried by the court." Letter from Mr. George H. Freeman, clerk of the Superior Court, dated May 6, 1931. In Bridgeport, 21 cases, ranging in seriousness from assault with intent to murder, to lascivious carriage, were tried by the Superior Court without a jury between September, 1929, and July, 1930. Letter from Mr. Michael J. Flanagan, clerk, dated May 9, 1931. Mr. Richard H. Phillips, reporter of the Supreme Court of Errors, and until recently secretary of the Judicial Council, summarizing the situation for the state as a whole, says that "very few criminal cases are tried to the jury, the accused almost always preferring to be tried to the court." The distinction between felonies and mis-

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come the general rule, while in Oklahoma[9] and Washington[10] the statutes have been virtually ignored. Indiana and New Jersey, the

demeanors has been abolished in Connecticut; hence no separate figures are available as to felonies and the major misdemeanors. (Only the more serious criminal prosecutions are tried in the Superior Court.) The belief seems to be general that there is little difference, so far as waiver is concerned, as between what other jurisdictions would denominate felonies and misdemeanors, respectively, the controlling factors being other than the seriousness of the penalty that follows conviction.

[7] In the Supreme Bench of Baltimore, which tries all felonies as well as the major misdemeanors, the non-jury criminal trials have consistently averaged 95 per cent. In 1927, 4,588 cases were tried to the court, while only 229 were tried with juries. California Judicial Council, *Second Report* (1929), p.44. *Cf.* the circuit court for Washington county, Hagerstown, where approximately 25 per cent of the contested felony cases are tried without a jury. Letter from Mr. Edward Oswald, clerk, dated May 20, 1931.

[8] "In 1929, there were 1,852 cases brought before the Municipal Court, thirteen of which were pending on January 1st, 1929. Seven of these cases were pending on January 1st, 1930, which made a total of 1,845 cases disposed of during the year. The total of cases, nolled, dismissed, transferred to the Circuit Court, cases in which the defendants were adjudicated insane before trial and committed, and so forth, amounted to 76. Deducting this figure from the 1,845 cases disposed of leaves a balance of 1,769. Deducting 988 pleas of guilty, leaves a balance of 781 cases that were contested; 104 of these were jury trials, and 677 were tried on waivers. This amounts to approximately 13 per cent jury trials and 87 per cent waivers of jury. In 1930, there were 2,053 cases before the court, eight of which were pending on January 1st, 1931. This left a balance of 2,045 cases disposed of. Eighty-eight of these cases were disposed of by being nolled and dismissed, and by transfer to the Circuit Court, others by reason of the defendants being adjudicated insane before the trial and committed, and so forth. This left a total of 1,957 cases. Of these, 1,045 were disposed of on pleas of guilty, leaving a balance of 912 contested cases. There were 130 jury issues and 782 waivers. This amounts to approximately 14 per cent juries and 86 per cent waivers of juries." Letter from Hon. George A. Shaughnessy, judge of the Municipal Court of Milwaukee, dated May 25, 1931. This court tries felony cases exclusively. It will be noted that the proportion of cases disposed of other than by actual trial is exceptionally low. *Cf. Illinois Crime Survey* (1929), p. 102. Milwaukee authorities attribute this in part to the advantages accruing from the non-jury trial.

[9] Mr. Phil K. Oldham, county attorney of Muskogee county, writes: "I have been in this office for almost six years and have never tried a defendant before the court without a jury. . . . I am sure that you will find this situation all over the state." Letter dated June 22, 1931. Mr. W. L. Coffey, county attorney of Tulsa county, writes that "it is very seldom that defendants in this state waive their right of trial by jury." In his own county, such waivers average less than two a year. Letter dated June 24, 1931. Mr. Lewis R. Morris, county attorney of Oklahoma county, the most populous in the state, reports two non-jury trials during the first six months of the year. In twelve years' practice of criminal law, his firm

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two remaining states in which the legality of the practice is of comparatively long standing, occupy a middle ground.[11] The same is true of the new converts to the rule. In Virginia, the judge has definitely gained a monopoly;[12] Illinois[13] and California[14] appear to be tending

never handled a case in which the defendant pled not guilty and waived a jury trial. Letter dated July 13, 1931.

[10] Mr. Benjamin T. Hart, chief deputy to the clerk of the Superior Court of King county (Seattle), writes that "waivers come so infrequently," in misdemeanor as well as felony cases, that neither he nor any one in the office of the presiding judge can recall such a waiver in recent months. Letter dated April 30, 1931. Mr. Charles W. Greenough, prosecuting attorney for Spokane county, states that during his eight years' incumbency "we have had but one case which was submitted to the court." Letter dated May 6, 1931. From Tacoma comes word that "To my knowledge no defendant in Pierce county during the past seven years has taken advantage of [the statute] authorizing a waiver of trial by jury. . . . Inquiry has been made of other members of this office and of the judges, and no case has been recalled by any of them. Letter from Prosecuting Attorney Bertil E. Johnson, dated May 8, 1931. The same news comes from the rural sections. "In the eight years that I have been in this office," writes Mr. Charles E. Vetter, clerk of the superior court of Yakima county, "there have been but two instances where [a jury was waived]. One was a case of driving while drunk, and the other was a liquor case under the felony penalty." Letter dated May 4, 1931. Mr. Archie B. Stewart, county clerk of Whatcom county, cannot recall a single instance of such a waiver. Letter dated May 2, 1931.

[11] See S. C. Oppenheim, "Waiver of Trial by Jury in Criminal Cases" (1927), 25 *Mich. L. Rev.* 695. In both states, waiver in misdemeanor cases is the general rule, although the proportion is much lower in offenses of the more serious grade. In Passaic county (Paterson), of the 855 trials on indictments during 1930 not more than 5 per cent were by jury. (The figures include both misdemeanors and "high misdemeanors." The word "felony" is not used in New Jersey). Letter from Mr. Lloyd B. Marsh, county clerk, dated May 29, 1931. Non-jury trials became so frequent that in 1926 the New Jersey legislature created a special system of criminal district courts to try only those cases where indictment and trial by jury are waived.

[12] "In the two and one-half years that this provision has been in effect we have not had a single case of a felony jury of less than the former number of 12, but . . . probably 70 per cent of the pleas of not guilty are now tried by the court without a jury. Letter from Mr. Thomas R. Miller, deputy clerk, Hustings Court, Richmond, dated May 16, 1931. (The Virginia statute authorizes a complete waiver, or an agreement upon any number of jurors less than 12. Doubtless the real purpose of the latter is to validate a conviction following the forced dismissal of a juror).

[13] Since the decision in People v. Fisher (1930), *op. cit., supra* note 13, "juries have been waived in two-thirds of the cases tried in the Criminal Court" of Chicago, and a like proportion in the other courts. Judicial Advisory Council of Cook

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in that direction. A recent survey of felony prosecutions in Detroit revealed that for a nine months' period the cases tried to a jury numbered 1,271, while in 1,593 cases a jury was waived.[15] On the other hand, news comes from Lansing that in Ingham county, Michigan, there has been but one waiver of a jury trial in the course of the last year.[16] In Boston, approximately 11 per cent of the felony trials are without a jury;[17] in Cleveland, only 45 waivers have been recorded out of a list of 1,544 indictments.[18] And in Rhode Island, the Judicial Council, after a vigorous and successful battle for the passage of a waiver statute, is protesting that thus far the act has been virtually a dead letter.[19]

County, *First Report* (1931), p. 27. Hon. Denis E. Sullivan, judge of the Superior Court and a member of the Council, writes: "I am not thoroughly advised as to the percentage of jury waivers between felonies and misdemeanors, but understand that there is no difference. In fact, 68 per cent of such waivers relate to our Criminal Court, which tries only felonies in so far as the first count of the indictment is concerned." Letter dated May 18, 1931. See also Judicial Advisory Council of Illinois, *First Report* (1930), p. 26.

[14] For the year ending June 30, 1930, 659 of the 2,270 contested felony cases were tried to the court. This is 29 per cent. For the four metropolitan counties, Alameda (Berkeley, Oakland), Los Angeles, San Diego, and San Francisco, the proportions were 18.4, 43.6, 23.2, and 11.0 per cent, respectively. In comparison, of the 223 misdemeanor cases tried in the Superior Court, which handles all felony cases, the proportion of waivers to total cases tried was 42.6 per cent for the state at large, and 41.7, 57.7, 15.5, and 28.6 per cent, respectively, for the four metropolitan counties. It will be noted that in the Los Angeles courts, which handle approximately 46 per cent of all the cases, non-jury trials are far more frequent than in the balance of the state. The Judicial Council, in its *Third Report* (1931), p. 35, states: "During the fiscal year ending June 30, 1929, out of a total of 867 contested criminal trials, 241, or slightly more than 27 per cent, were heard without a jury. In the following year this ratio had increased quite considerably, with the result that approximately 44 per cent of all the defendants tried waived a jury." It is hard to say what figures those cited for 1928-29 represent; Appendix B clearly shows that 1,254 persons were *convicted* of felony in that year. The statement regarding 1929-30 was apparently taken from an estimate in the *Second Report* (1929), p. 45; but this prediction failed to materialize. I have prepared my figures from Appendices B and C of the Council's *Third Report.*

[15] Judicial Council of California, *Second Report* (1929), p. 45.

[16] Letter from Miss Flora G. Dewey, deputy county clerk, dated May 27, 1931.

[17] Letter from Mr. John R. Campbell, clerk of the criminal court, dated May 11, 1931. Waiver is most frequent in morals cases.

[18] Letter from Hon. Homer G. Powell, chief justice of the court of common pleas, dated May 5, 1931.

[19] *Fourth Report* (1930), p. 8. The statistical summaries appended to the *Report*

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Frequency of Waiver: Federal Courts. After the advent of national prohibition and the consequent deluge of federal liquor prosecutions,[20] the apparent necessity that all criminal trials in the district courts, for misdemeanors as well as felonies, be by jury[21] was a constant source of complaint on the part of all who wished to see these tribunals given at least a Chinaman's chance to keep up with their dockets.[22] However, at least one federal district judge doubted that trial by jury was necessary, even in the absence of further legislation. Hon. Albert W. Johnson, sitting for the Middle District of Pennsylvania, as long ago as 1926 adopted the practice of permitting the defense and the prosecution to waive a jury in any criminal case.[23] That the

show but five instances of non-jury criminal trials, including misdemeanors as well as felonies, in the courts of general jurisdiction during a year's time. In fact, as the Council bitterly complained in its *First Report* (1927), p. 23, "of the *civil* trials only some 2 or 3 per cent are without jury."

[20] "It is probable that [in 1929] more persons were prosecuted in the federal court for violations of the prohibition laws than were prosecuted in the state courts for all criminal offenses." Judicial Council of Idaho, *First Report* (1930), p. 12.

[21] That such was the law was accepted as settled by the decisions in Thompson v. Utah (1897), 170 U.S. 343, 345, 18 S. Ct. 620 *(dictum);* Dickinson v. U.S. (C.C.A. 1908), 159 F. 801; Low v. U.S. (C.C.A. 1909), 169 F. 86; and Coates v. U.S. (C.C.A. 1923), 290 F. 134. The opinions even threw a cloud of doubt upon the power of Congress to authorize criminal trials without a jury, or with one of less than 12 men, the defendant consenting. Only "petty offenses" were excepted —Schick v. U.S. (1903), 195 U.S. 65, 24 S.Ct. 826—and no one appeared ready to champion the doctrine that a violation of the "law of all laws" was a *petty* offense, at least under the existing provisions of the Volstead Act. See the article cited *supra,* note 2.

[22] See National Commission on Law Observance and Enforcement, Report Supplemental to the Preliminary Report on Observance and Enforcement of Prohibition (1930), House of Representatives, 71st. Congress, 2d. Session, Document No. 252, pp. 20 ff.

[23] Letter from Hon. A. W. Johnson, dated May 25, 1931. Judge Johnson explains: "As you understand, until . . . April 14, 1930 [the date of the Patton case, *op. cit., supra* note 1], the legality of the waiver of jury trials was questioned, but notwithstanding this doubt *on account of the large number of cases* I permitted [it]. I do not know of any other district in which such procedure prevailed." Nor does the present writer know of any such practice elsewhere. But see *infra,* note 47. It seems a little strange that this practice should have been first followed by a judge sitting in the state of Pennsylvania, who, immediately preceding his appointment to the federal bench, had for ten years been a judge of the state court of common pleas, Pennsylvania being one of the states in which a belief in the illegality of a waiver of jury trial at common law has been most

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procedure was acceptable to all concerned is shown not only by the frequency with which it was followed, but likewise by the fact that it was not attacked in the appellate courts.

In this district, of course, the sole effect of the Patton decision[24] has been to enable the court and the United States attorney's office to breathe a little more freely while following out their old practice. "Today," writes Judge Johnson, "at least 90 per cent of all our criminal cases [in this district] are tried to the court without a jury by . . . agreement of counsel. The court does not urge or even encourage this . . . but the lawyers desire to try their criminal cases in this way. . . . In difficult and serious cases I much prefer to have a jury dispose of the facts than to dispose of them myself.[25] Nevertheless, the fact remains that trial by jury, in felony as well as misdemeanor cases, now occupies a very secondary place in this jurisdiction.

Outside of the Middle District of Pennsylvania, there appear to be few instances in which the practice of trial by judge alone has as yet struck root, and none in which it has gained such a preëminent position. From Philadelphia comes word that "we have never had in this district a waiver of the right to a jury in any criminal case,"[26] which is duplicated in letters from federal courts sitting in the states of Arizona,[27] Connecticut,[28] Illinois (Northern District),[29] Maine,[30]

constantly respected. See Commonwealth v. Hall (1928), 219 Pa. 341, 140 A. 626, where Mr. Chief Justice Moschzisker, who was unusually well informed upon trial courts in general, and jury trial in particular, stated (p. 354) that the case at bar appeared to be the first instance where a Pennsylvania judge, on a plea of not guilty, had undertaken to try an indictable offense without a jury. Had the practice first arisen in Maryland, it would have been less surprising. See the article by Mr. Chief Justice Bond, *op. cit., supra* note 4.

[24] *Op. cit., supra* note 2.

[25] *Op. cit., supra* note 23.

[26] Letter from Judge O. B. Dickinson, Eastern District of Pennsylvania, dated May 25, 1931.

[27] "We have, however, had a few cases in which the defendant has stipulated to be tried by a jury of less than twelve, but those cases are rare indeed. This applies both to felony and misdemeanor actions." Letter from Judge F. C. Jacobs, dated May 22, 1931.

[28] "During my eighteen years' experience on the bench I do not recall any case where the defendant in a criminal action waived a jury. That procedure is common in Connecticut state courts, but it has never been adopted in this federal district. This is true of both felony and misdemeanor prosecutions." Letter from Judge Edwin S. Thomas, dated May 25, 1931.

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Massachusetts,[31] Minnesota,[32] Nebraska,[33] New Jersey,[34] New York (Eastern and Southern Districts),[35] North Carolina (Middle District),[36] Ohio (Northern District),[37] Rhode Island,[38] South Dakota,[39] Washington (Eastern District),[40] West Virginia (Northern District),[41]

[29] Judge George A. Carpenter, states that he "never accepts a waiver of a jury in a criminal case." Letter dated May 20, 1931.

[30] "We have had no such trials here either before or since the [Patton case], and I think we are not likely to have many. They [the defendants] rather think the jury is their only hope. Even in misdemeanor cases, they go to a jury, so you can put this district down as being strong for the jury trial so far as defendants in criminal cases are concerned." Letter from Judge John A. Peters, dated May 25, 1931.

[31] "I have been a judge of the federal district court for Massachusetts for eight years. During that time I have never known a jury trial in a criminal case to have been waived." Letter from Hon. James A. Lowell, dated May 26, 1931.

[32] Hon. William A. Cant, letter dated May 27, 1931. Judge Cant feels that waivers may be expected in the future, "but not many for a considerable time to come."

[33] "There has been no instance of a waiver . . . in any criminal case." Letter from Judge Thomas C. Munger, dated May 23, 1931.

[34] Judge William Clark states: "In six years' experience I have never known the waiver of jury trials." Judge John B. Avis recalls a recent case where "the defendant's counsel offered to go to trial without a jury, but the United States attorney objected, and the case was submitted to a jury." Letters dated May 25, 1931.

[35] Hon. Grover M. Moscowitz, Eastern District of New York, states: "No non-jury trials, either felonies or misdemeanors, have been tried before me, or any other judge of the court so far as I have known." Letter dated May 18, 1931. Judge Bondy, New York City, writes to the same effect, concerning the Southern District. Letter dated May 22, 1931.

[36] Judge Johnson J. Haynes states that in prosecutions growing out of the prohibition law, the Mann Act, and the Dyer Act, defendants frequently offer to try the case to the court, but since he believes that "where the facts are in dispute the jury should determine the matter" such offers are rejected. Letter dated May 25, 1931.

[37] "We have had no requests for waivers of juries in the trials of criminal cases." Letter from Mr. Lawrence Lennon, secretary to the judges, Northern District of Ohio, dated May 27, 1931.

[38] No offers to waive juries have been made. Letter from Miss Alice E. Richards, secretary to Judge Letts, dated May 25, 1931.

[39] "I am aware of the decision [Patton v. U.S.] that you refer to, but not a single defendant has taken advantage of that privilege in this district." Letter from Judge James D. Elliott, dated May 25, 1931.

[40] "I am familiar with Patton v. United States, decided in April, 1930, but notwithstanding this decision, no criminal cases, either felonies or misdemeanors, in

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and Wisconsin (Eastern District).[42] Hon. Frank H. Kerrigan, district judge for the Northern District of California, writes that "there have been but two . . . criminal cases tried in this district wherein a jury trial was waived. . . . Needless to say, the proportion of these cases to the total number of criminal cases tried is negligible.[43] In the Northern District of Texas, juries are waived in two or three cases per term, but these are generally misdemeanor rather than felony actions.[44] However, in the Southern District of California,[45] the District of Maryland,[46] and the Western District of North Carolina,[47] the non-jury trial

my district, are tried to the court without a jury. I do not feel that under the Patton case the trial of criminal cases without a jury is to be pursued as a practice. I think the rule is intended to be applied with circumspection in special circumstances." Letter from Judge J. Stanley Webster, dated June 10, 1931.

[41] "I have had no such waiver either in felony or misdemeanor cases in my court. About 98 per cent of the criminal cases instituted in this court are on confessions. The others are tried by jury." Letter from Judge W. E. Baker, dated May 19, 1931.

[42] Letter from Judge F. A. Geiger, dated May 18, 1931.

[43] Letter dated May 22, 1931. His statement that "in both the state courts and the United States district courts in California it has never become customary to waive a jury trial in criminal cases amounting to a felony" would seem to show that he is not aware of recent developments. See *supra* note 14 and *infra* note 45.

[44] Letter from Judge William H. Atwell, dated May 18, 1931.

[45] Hon. Samuel W. McNabb, United States attorney for the district, estimates that since the decision of the Patton case, juries have been waived in approximately 25 per cent of all contested cases. He adds: "There are no special types of cases in which waivers have been particularly noticeable, nor is there any particular difference with regard to felony or misdemeanor actions. In our courts, however, a large percentage of the cases coming on for trial are felony cases." Letter dated June 12, 1931.

[46] "Since April 14, 1930 [the date of the Patton case] . . . the records of this court disclose that 16 defendants have elected to waiver a jury. These were all cases under the national prohibition act, seven of them being brought under provisions of that act relating to offenses which constituted misdemeanors, and nine under provisions constituting felonies." Letter from Judge William C. Coleman dated May 19, 1931. In view of the practice in the state courts, one would have expected a much larger number of non-jury trials. See *supra* note 7.

[47] "I estimate that during the past two years in my jurisdiction 85 to 90 per cent of the cases tried in my court were disposed of on pleas of guilty. Five to ten per cent of the other cases are submitted to me to pass upon the evidence . . . and not over five per cent are contested before a jury." Letter from Judge Edwin Yates Webb, dated May 28, 1931. Prior to the Patton case, non-jury trials were secured through an agreement to plead guilty if the judge found that the evi-

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has taken definite root, and has already shown signs of becoming, in time, the rule rather than the exception.

In the District of Columbia, to which the rule of the Patton case[48] would seem equally applicable, "there have been only four felony cases out of approximately two hundred set down for trial (during the current court year, which began in October, 1930) in which the defendant has waived a jury and stood trial before the court."[49] None of the cases was important, and only one of the five defendants involved was convicted.[50] The practice of waiving a jury in misdemeanor cases is of long standing in the District of Columbia, having been sanctioned by act of Congress since 1892.[51]

Of course it is true that "the time which has elapsed since the announcement of the decision in Patton v. United States . . .[52] has not been sufficiently long to develop the possibilities which that decision carries with it."[53] Judge Atwell feels that "the bar is generally of the opinion—I mean those gentlemen who practice criminal law—that a jury cannot be waived in a felony case. They do not appear to be generally aware of the Patton case."[54] In the course of time, as the practice becomes less novel and the antipathy of the Federal bench toward accepting the additional duties involved decreases in intensity,[55] it is to be expected that it will be more generally utilized. But

dence sustained the charge. Otherwise, the district attorney agreed to *nol. pros.* the case. Such a procedure is in use today in many jurisdictions where a waiver is illegal. In some courts, including the Municipal Court of Milwaukee, even legitimate pleas of guilty are handled in this manner, as experience has shown that occasionally defendants plead guilty of charges of which they are innocent.

[48] *Op. cit., supra* note 2.

[49] Letter from Hon. Leo A. Rover, United States attorney, District of Columbia, dated May 27, 1931.

[50] *Ibid.*

[51] *Code of the District of Columbia* 1929, Title 18, s. 165, p. 167, sustained in Belt v. United States (1894), 4 App. D.C. 25, 22 Wash. Law Rep. 447. The Supreme Court refusing to review the case, In re Belt (1895), 159 U.S. 95, 15 S. Ct. 987, the decision of the Court of Appeals of the District has stood unchallenged since that date. See the article cited *supra* note 2.

[52] *Op. cit., supra* note 2.

[53] *Op. cit., supra* note 32.

[54] *Op. cit., supra* note 44. And see *supra* note 2.

[55] The wide scope and intensity of this feeling is evident from the general tenor of the letters received. Few question the legality of waiver under the Patton case (*op. cit., supra* note 2), but many apparently doubt the desirability of the practice as applied to *their* court.

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any belief that the present lack of waivers is due entirely, or even largely, to the newness of the rule should be rudely dispelled by the experiences of Washington,[56] Oklahoma,[57] and Rhode Island.[58] What doubt remains should be disposed of by the experiences of Alabama and Delaware in misdemeanor prosecutions. In the former state, a jury may be had only if the defendant, in advance of trial *demands* it.[59] Such a demand is almost always made; in fact, "it is a rare thing, practically unknown, for a defendant to consent to trial by the court without a jury."[60] And in Delaware, although the statutes authorize a defendant in a misdemeanor case to waive a jury and have his case tried to a bench of from one to three judges,[61] the attorney-general estimates that this is done in "less than one per cent" of the cases.[62]

Types of Cases where a Jury is Waived.[63] Few definite tendencies to waive a jury in particular types of cases, while refraining from doing so in others, are discernible. The most that can be said is that in certain "morals" actions, more particularly offenses against women and young girls, and, in some jurisdictions, liquor cases, defendants appear anxious to evade a jury. In other jurisdictions, the situation is the reverse, defense counsel apparently feeling that their greatest chance of success lies with the "twelve good men and true" in the jury box. Thus in the District of Columbia, in misdemeanor actions, 95 per cent of all prohibition and gaming prosecutions are tried by jury, the defendants waiving a jury in only one case in twenty; for the balance of the offenses the proportion is just the reverse.[64] Obviously, the controlling factors are not so much the particular charge or the possible penalty involved, but rather what defense counsel considers "good psychology" in the case at hand. The former are important only in so far as they influence the latter. And "good psychology" involves the matter of personalities, including those of the judge, the probable jurors, and the lawyers themselves.

[56] *Op. cit., supra* note 10.

[57] *Op. cit., supra* note 9.

[58] *Op. cit., supra* note 19.

[59] *Code* 1923, s. 4647. Of course a different rule prevails as to "petty offenses."

[60] Letter from Hon. Walter B. Jones, Montgomery, Alabama, dated April 28, 1931. Judge Jones is speaking of the general practice in the entire state.

[61] *Laws*, 1927, c. 233 S.I.

[62] Letter from Attorney-General Reuben Satterthwaite, Jr., dated May 14, 1931.

[63] Because of requests from many who furnished information for this section, fewer statements as to sources are given.

[64] *Op. cit., supra* note 49.

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If the defense is technical, or involves fine-spun distinctions between "fact" and "law,"[65] and more particularly if the evidence is limited and none too clear, there seems to be a tendency to regard the trained mind of the judge as more certain to render a favorable verdict than would be true should the case go to a jury. On the contrary, where counsel is pretty certain of his client's guilt, but has a few misleading incidents, he prefers a jury, figuring that he may get one or two to go off on a tangent and thus get a compromise verdict, if not an acquittal or a hung jury.

Two of the four instances of felony waivers in the District of Columbia[66] are cases in point. In one case, two defendants were accused of grand larceny. Both had rather lengthy records, but wished to take the stand in their own defense. Feeling that the prosecution's case was not a strong one, but that their chances of acquittal might be jeopardized the moment the jury was informed, on cross examination, of their prior convictions, their attorney chose to try the case to the court. Subsequently, one was convicted and the other acquitted. The second instance was a narcotics action in which the prosecution had a strong case, the principal defense being that most of the evidence had been secured through an illegal search, and hence was inadmissible. Doubting that ability of a jury to overlook such evidence once it had been brought to its attention—and it is extremely difficult to prevent all (legally speaking) irrelevant facts from reaching the ears of the jury—counsel chose to present the case to the court, and, winning his point, secured the acquittal of his client.

The latter case illustrates one of the least satisfactory features of our present rules of procedure—and a possible solution. "Instructions" from the judge to "disregard" the facts are no solution at all. It takes a mind "learned in the law," and understanding, or at least believing to understand, "the reason of the rule," to apply it in all its pristine purity.

Another element that tends to influence the choice of a non-jury trial is the fear of the effect of popular feeling upon the minds of the jurors in certain types of cases of a revolting nature. This is particularly true where the defendant's past record is not of the highest.

[65] "The existence of a jury makes of the distinction between law and facts an essential principle of the procedure, while one of the main features of the common law is precisely its failure to distinguish facts and law!" Pierre Lepaulle, "Jury, Democracy, and Efficiency," *Forum*, July, 1928, p. 52.

[66] *Op. cit., supra* note 49.

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Justice often demands that we "protect those coming into court from the heart, the nerves, the obscure instincts and passions of the crowd and the mob. . . . It requires not only great intelligence and character, but also professional training, to resist the pressure of public opinion and judge a case on the actual evidence."[67] The judge, not alone because of this training, but likewise because of this less sentimental attitude, may come closer to doing this than would the laymen on the jury. Trained to detect the weak links in a chain of circumstantial evidence, to look beyond mere race prejudice to the actual *fait accompli*, and bound by the code of ethics of his profession, he may often be the one beacon of hope in a sea of despair. But let us not wax too eloquent on the subject! The present writer has just visited a locality where "trial by newspaper" is as common in a non-jury as in a jury trial; where the judge banks upon sensationalism as his greatest friend; and where assignment to the criminal branch is looked upon as a no less sure stepping stone to higher offices "in the gift of the people" than are positions in the office of the prosecuting attorney.

Like many another question, that of the effect of delay upon the waiver of jury trial has at least two sides. Many federal judges doubt that any general practice of waiver can develop while their courts are as hopelessly swamped with litigation as they are at the present time. As long as over eight-ninths of all convictions in prohibition cases are on pleas of guilty—a large proportion of them entered on "bargain days"[68]—this doubt would seem to be well founded. Since the prosecution cannot possibly press for trial more than a very small percentage of the cases where the defendant stands upon his right to be considered innocent until convicted "in due course of law," it would seem to be the height of irrationality to exchange the advantages of the bargain sale of sentences for those of the non-jury trial. On the other hand, the poor litigant who is unable to make bail, and must stay in jail to await a trial by jury, is more apt to prefer a prompt trial before the judge alone.

Benefits and Detriments of Waiver: To the State. Aside from the possibility of more accurate decisions, at least in certain types of cases or under certain sets of circumstances, the non-jury trial has

[67] *Op. cit., supra* note 65, at pp. 50, 53.

[68] National Commission on Law Observance and Enforcement, Report on the Enforcement of the Prohibition Laws of the United States (1931), 71st Congress, 3rd. Session, House Document No. 722, p. 56.

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certain definite advantages as a time and money saver, and as a restorative of more business-like methods in criminal trials. Chief Justice Bond estimates that in Maryland the non-jury trial of a given case requires not more than a third of the time which would be required to try the same case with a jury,[69] and the experiences of other jurisdictions appear to support this as a general rule. In many instances a case could have been tried and disposed of by a judge in less time than it has taken to impanel the jury. The financial saving, in view of the fact that a jury trial costs the state, speaking conservatively, in the neighborhood of from $150 to $200 per day[70]—and for a short day—is evident. But one may question the argument of dollars and cents when applied to felony trials. If economy be our object, we might better start with the civil jury. At least in the field of criminal law, the true advantages of speedier justice lie elsewhere.

Of as great importance as the saving in time is the greater security against error, and consequently the greater certainty of finality. Non-jury trials are less technical, more business-like, and surer footed. "Appoint a keen, critical, and trained mind to pass upon the facts and you will eliminate more worthless material than by all the rules of evidence;"[71] for lawyers do not like to make fools of themselves. That paradox of legal science, the judge's charge to the jury, is, of legal necessity, often prepared to pass muster before an appellate court rather than to enlighten the jury. Even so, error creeps in; and the concomitant of error is further litigation, and possibly a new trial. Not the least of the advantages of the non-jury trial is the elimination of a new trial.

In short, "If more speedy, less costly, and more dignified trials, arriving at more accurate results, are a desirable goal in the administration of justice, then the trial of criminal cases without a jury," the defendant willing, is a step in the right direction.[72] If it be alleged that this places too great a burden upon the shoulders of the judge, it is replied that the burden is placed where it logically belongs. If in certain types of cases it be too great a burden for a single man, then why not copy the Maryland practice, as old as the state itself, of giving him the moral and mental support of one or two of his colleagues?

[69] *Op. cit., supra* note 4.

[70] The Judicial Council of Rhode Island sets the figure at $185 for the principal trial courts of that state. *First Report* (1927), p. 10.

[71] *Op. cit., supra* note 65, at p. 53.

[72] Massachusetts Judicial Council, *Third Report* (1927), p. 112.

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Although but little evidence is available, such statistics as exist would seem to indicate that the extensive use of the non-jury trial tends to increase the proportion of actual trials at the expense of the *nolle prosequi* and the "bargain" plea of guilty. In Milwaukee, where over 85 per cent of all felony trials are by a judge alone, only two per cent of the pleas of guilty are of an offense other than that charged in the original indictment or information.[73] In Chicago, however, during the period when all trials were by jury, 79 per cent of such pleas were of a lesser offense.[74] Although it was impossible to isolate the contributing factors, those who conducted the Illinois Crime Survey were led to believe that the method of trial was of controlling importance.[75] Professor Moley has found such a tendency at work in other jurisdictions, notably Connecticut.[76] Further data, however, is necessary before reliable conclusions can be drawn.

Benefits and Detriments of Waiver: To the Accused. This question has already been largely answered in our consideration of the causes of waiver. Suffice it to say that there are cases where it is a positive injustice to deny the defendant the right to waive a jury; where the right to refuse to be "tried by one's country" is as valuable a right as that to trial by jury itself. These *facts* would seem to invalidate much of the *dicta* of the reports that such a procedure is "contrary to public policy," and "cannot be tolerated," and to relegate them to the category of Lord Coke's equally famous *dictum* that the common law forced the defendant to stand mute before the altar of justice, like the lamb before the altar of its God, without counsel, without process to secure witnesses in his favor, because of "that tenderness and humanity to prisoners, for which our English laws are justly famous;"[77] or that equally absurd statement by his illustrious compatriot, Sir William Blackstone, that the common law condemned women to be burned alive at the stake because English gallantry could not bear to see them maimed and exposed to the public view upon the common gallows.[78]

On one point, however, a protest must be recorded. However valuable the *right* to waive a jury trial may be, to bring pressure to bear

[73] *Illinois Crime Survey* (1929), p. 103.
[74] *Ibid.*
[75] *Ibid.*, pp. 16, 102.
[76] *Op. cit., supra* note 1, at p. 191.
[77] *Coke's Littleton*, s. 1566.
[78] *Blackstone's Commentaries*, Bk. IV, p. 93.

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to force a defendant to exercise that privilege is to convert it from a right to a weapon of abuse. It should not be necessary to bargain with the prosecuting attorney or accept trial by the court in order to secure a prompt disposition of one's case. It would seem that a people who have elevated the language of the Great Charter, "to no man will I deny justice, to no man will I delay it," to the position of a constitutional mandate should ponder well the condition of the docket of many of our criminal courts. No man should be denied equality before the law because he cannot put up bond. However, *other things being equal,* the waiver of jury trial by others should increase the speed of the wheels of justice and decrease the waiting period for those who are thus unfortunate.

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RURAL LOCAL GOVERNMENT

EDITED BY THOMAS H. REED
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State Centralization in North Carolina. In recent years, two pronounced tendencies have been manifest in the relation of the states to the local governments. One has been increased state aid for the support of functions which have hitherto been recognized as local functions, particularly roads and schools. These enlarged state grants have been made partly to relieve the burden of local taxation, partly in recognition of a larger responsibility on the part of the state, and partly to stimulate a higher quality of service. In order to insure the realization of the last-mentioned purpose, the aid has usually been conditioned on the fulfillment of certain minimum requirements.

The second tendency has been for the state to assume closer supervision over the finances of local government. This greater solicitude on the part of the state in respect to local finances has sprung from a number of reasons, two of which are the tremendous increase in the size of local funds since the beginning of the road-building era and the frequent misuse of the debt-incurring privilege.

Both of these tendencies have been manifest in North Carolina, but the state has now suddenly abandoned conditioned state aid as a policy and taken over, in a large measure, the functions themselves. In respect to local finances, it has tightened its control. In other words, it has adopted a policy of state centralization that has not been equaled by any American state, except probably North Dakota during the administration of the Non-Partisan League. It is the purpose of this article to trace briefly the developments which have been taking place in North Carolina, and which have culminated in a policy that some outsiders view with alarm and others as an interesting and timely experiment.

State Control Over Local Finances. For several years, North Carolina has been working toward improved county government. Its greatest efforts have been in the direction of better fiscal control. Rapidly mounting expenditures demand better bookkeeping and greater financial safeguards than have generally prevailed. Thus, prior to 1927 several counties had, through special acts of the legislature, secured county

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auditors. A few had installed budgetary control, and several had abolished the office of county treasurer and appointed banks as fiscal agents. In a majority of the counties, however, the crudest kind of bookkeeping prevailed and losses through lax financial practices were common. Consequently, the General Assembly of 1927 enacted legislation which required every county to appoint a county accountant and to operate on a budget basis. Other legislation imposed rigid restrictions on the amount and character of further bond issues. Finally, there was created a county government advisory commission, staffed with trained accountants, to inform county officials about the laws and, upon request, assist a county with its bookkeeping or administration.

As a result of these new aids and safeguards, there was remarkable improvement in county administration and financial practice, and the demands on the advisory commission were greater than could be filled. Nevertheless, there were some counties which ignored the provisions of the law or obeyed them in letter but not in spirit. It is possible that by enlarging the staff of the advisory commission this unique and highly commendable agency could eventually have nurtured the counties into a state of financial health. But the legislature of 1931 was in a mood for drastic action.

Therefore it abolished the county government advisory commission and created a more powerful agency known as the local government finance commission. The state auditor, state treasurer, and commissioner of revenue are members *ex officio*. The remaining six members are appointed by the governor and hold office at his pleasure. One of the appointed members is designated by the governor as director of local government. The director acts as secretary of the commission, but has many independent functions and powers.

Under the provisions of the act, no bond or note of a municipality, county, or other political subdivision is valid unless approved by the commission. Neither may the commission approve any bond or note until it is satisfied that the issue is necessary or expedient, and that the amount proposed is adequate and not excessive. Furthermore, in all cases except those involving funding or refunding bonds, the commission's approval must be withheld until it is satisfied that adequate sinking funds have been, and will continue to be, maintained, that the political unit is not in default in the payment of the principal or interest on any of its indebtedness, that the new issue will not involve an unduly burdensome increase in taxation, that the unit is complying

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with the law in respect to budgetary control, and that at least eighty per cent of the general taxes of the unit for the preceding fiscal year have been collected. The commission is required, on request, to grant a public hearing on applications for approval of bonds and notes. If it refuses to approve, bonds cannot be issued except after a favorable vote at an election.

All bonds and notes must be sold by the commission in Raleigh, unless exchanged by the state treasurer for outstanding indebtedness. The securities are delivered to the purchaser by the state treasurer, who receives the proceeds and remits to the proper authorities. All sales must be duly advertised and the award given to the highest bidder, interest rate being considered. Sealed bids are required and auctions are prohibited.

The director of the commission is required to keep himself informed as to the condition of local sinking funds, including their amount, their investment, the security given for their safekeeping, and the rate of tax necessary to maintain them. Sinking funds may be invested only with the approval of the commission, and only in specified securities.

Another drastic feature of the act is the provision that in case any unit defaults in the payment of a debt obligation, the director may appoint an administrator of finance for the unit to take full charge of tax collections and the custody and disbursement of all funds, unless the director should limit his duties in this respect. To prevent defaults, the director is required to mail each officer having any duties in connection with levying taxes, at least thirty days before the time for fixing the levy, a statement of the tax that must be levied for debt service; and at least thirty days before any debt obligation, principal or interest, is payable, the director must mail the disbursing officer a statement of the amount payable and the designated place of payment.

The assumption by the state of absolute control over local finances, in so far as they affect the creation or liquidation of debt, is probably unprecedented. It very definitely subordinates the counties and cities. It is a blow to local self-government. This extreme centralization of fiscal control was not provided, however, without cause. The counties and special districts of the state have an aggregate debt of $210,000,000. The cities have an additional debt of $166,000,000. In many cases, the public debt of a taxing unit exceeds twenty per cent of its total

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assessed value. For the next ten years, the tax levy for debt service will in most units need to be heavy. Many units have been showing a disposition to levy insufficient taxes to meet necessary expenditures. Some have defaulted in the payment of debt obligations, but more have offset the payment of debt with the creation of new debt. Some have used the assets of sinking funds to meet current expenses. Even more sinister has been the misuse of public funds, particularly to bolster up shaky banks. Several million dollars of public funds have been lost as a result of bank failures within the last two years. It was these conditions that caused the passage of the legislation described above with hardly a dissenting voice. The taxpayers of the state are willing at the moment to sacrifice home rule in return for security and tax relief. The state administration, in turn, believes that the relief which it has granted in road and school taxation, to be described presently, warrants its insistence on a steady and fairly rapid reduction of the public debt. It is determined that there shall be no defaulting, and that the credit of the state shall remain unblemished.

Evolution of County Managers. Along with improved fiscal control, North Carolina has been endeavoring to improve the quality of county administration. The effort has been primarily to provide a whole-time officer with knowledge of all departments of county government, and with power to bring about at least some degree of coördination. In some instances, a county auditor, serving also as clerk or agent of the board, has met this need fairly well. Quite frequently the auditor has been given additional duties, such as those of purchasing agent and tax supervisor. Other counties have employed the chairman of the board on a full-time basis, and have given him various administrative duties such as acting as purchasing agent or as road supervisor. A few counties have found it desirable to have both an auditor and a full-time chairman.

In eight or ten instances, this chief administrative officer, evolved from either auditor or chairman of the board, has been designated county manager. While in no case has he been the counterpart of the city manager in powers or scope of duties, he has in some instances been a reasonably strong executive. Two counties had secured chairman-managers prior to 1927 through legislative acts of local application, but in that year the legislature passed an act which permitted any county to adopt a manager plan, of a limited sort, by action of the board of commissioners. Moreover, on petition of five per cent of the

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qualified voters, a referendum on the adoption of the manager plan was required to be held; if carried, the appointment of a manager was mandatory. Most of the existing so-called managers were appointed as a result of this enabling legislation, and in no case have the citizens had to take the initiative.

It cannot be claimed that North Carolina's county managers, or pseudo-county managers, have been spectacular successes; nor have they demonstrated conclusively the advantages of the manager plan. That could hardly have been expected, for in no instance has the appointment been made entirely without regard to political considerations, in no instance has the appointee been especially trained for the position, and in no instance has he had ample powers. Despite these limitations, most of the managers have done remarkably well and have demonstrated the possibilities of a thoroughgoing manager system. Interest in county managers in North Carolina has naturally subsided as a result of the extensive transfer of functions from the county to the state; there now remains little for a county manager to do.

The State Takes Over All Roads. During the last ten years, the state has been gradually taking over, reconstructing, and assuming the maintenance of the primary roads, and by the end of 1930 the state highway system included 8,920 miles, 6,000 of which were hard-surfaced. Most of these roads have been constructed or reconstructed entirely at the cost of the state; a limited mileage was built by the counties and taken over later by the state. Until 1929, the revenues from the gasolene tax and automobile licenses were reserved exclusively for the state highway fund, and the proceeds were sufficient to maintain an increasing mileage, meet interest payments on the debt, make ample provision for sinking funds, and leave several million dollars a year for further construction. So insistent, however, was the demand on the part of the counties for a share of motor revenues that in 1929 the legislature increased the gasolene tax from four to five cents a gallon and provided that $3,000,000 a year (slightly more than the proceeds from the additional cent tax) be apportioned among the counties. The counties were permitted to use this grant for either road maintenance or road debt service. Most of them elected to use it for the latter purpose.

In 1930, a rather exhaustive survey of county roads, road organizations, and road finances was made under the joint auspices of the state tax commission, the state highway commission, and the United

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States bureau of public roads. This survey revealed that there were 45,000 miles of road outside the state highway system on which the counties and districts were spending from six to eight million dollars a year, with varied results. Some counties were maintaining their roads in good shape, others wholly inadequately. Some were utilizing convict labor profitably, others at an uncertain cost. Some had suitable road machinery, others lacked adequate equipment. Some had been extravagant in the purchase of machinery. Twenty-six counties had township or district road organizations either in place of or in addition to a county organization. All of the counties had large and generally mounting road debts. The aggregate road debt of the counties and special districts is at least $100,000,000, and in many cases there is evidence that the proceeds of bond issues have not been expended wisely. At any rate, the survey convinced Governor Gardner that more relief could be given the taxpayers by having the state take over the roads than by increasing state grants to be expended locally. Consequently, the General Assembly of 1931 increased the gasolene tax to six cents a gallon and provided that on July 1 of this year the state should take over, and thereafter maintain, all the roads of the state. An appropriation of $6,000,000 was made to maintain the 45,000 miles of local roads. All local road districts and road boards are dissolved. The state is taking over, with credit, such road machinery as it can use and permitting the counties to dispose of the rest. The state highway commission is reorganized, all district lines and district representatives being eliminated. The new board has cut the state for administrative purposes into five divisions and twenty-five districts. Within each district there will be as many maintenance outfits as can be kept continuously employed. The construction of new roads and the building and repair of bridges will be delegated to special crews with the proper machinery. It is believed that, on the whole, the local roads can be kept in better condition than they have been kept heretofore, and at lower cost. Whatever the cost, it will be derived entirely from motorists, and not one cent will be levied on property for road purposes, except to liquidate existing road indebtedness.

The State Takes Over Convicts. Property taxpayers are being relieved not only of the cost of building and maintaining roads, but also of the cost of supporting their convicts. The road law provides that the state shall take over and employ on the highways all able-bodied male convicts serving sentence of sixty days or more. At present, there

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are about 3,700 such prisoners so employed. They will be housed in district camps and used wherever they are needed. The honor system will be invoked as far as proves practicable. The clothing for the prisoners will be made at the state prison (an appropriation was made for a new one), and much of the food will be grown on the state farms or at the district camps. The state is taking over as many of the county camps as can be made suitable for its purposes.

It is obvious that it will not be necessary for each of the state's one hundred counties to maintain a jail to house a few women, old men, and misdemeanants. It will be feasible for several counties to unite in the support of one jail. Twenty-five or thirty new jails have been built in the last ten years, and it is to be hoped that no others need be built. Indeed, it is to be hoped that the end of the county jail is in sight. No one will mourn its passing.

The State to Support Minimum School Term. The North Carolina constitution provides that the "General Assembly . . . shall provide by taxation and otherwise for a general and uniform system of public schools . . . which shall be maintained at least six months in every year." There have always been those who contended that this meant state support of the six-month term, but never until this year has this view prevailed in the legislature. One reason why the state has been reluctant to assume this obligation is the fact that it relinquished the property tax in 1920, and its revenues from other taxes have not been sufficient to assume the cost. It has, however, gradually increased its contribution in the form of an equalization fund. In 1927, the appropriation for this purpose was $3,250,000, and 90 of the 100 counties participated. In 1929, the appropriation was increased to $5,250,000, and 94 counties participated. Moreover, an additional appropriation of $1,250,000 was apportioned to districts which were supporting extended terms (usually two additional months).

A determined effort was made in the recent legislature to secure full state support of the constitutional term (six months), and without resorting to the use of a property tax. However, a compromise measure was adopted by which the state assumes the current expenses of the six-month term, but is permitted to levy a property tax of fifteen cents on $100 of assessed value. Since the aggregate value of all property is slightly under three billion dollars, the property tax yield will be less than $4,500,000. The appropriation for the support of the six-month term is $16,500,000, and the appropriation toward the support of the extended term, $1,500,000. Thus, school support from other

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than property taxes is increased from $6,500,000 to $13,500,000. The $7,000,000 of additional revenue is to be raised from increased income, franchise, and business taxes.

This legislation is significant both because it represents a decided shift from property to other forms of taxation, and because it is a pronounced step toward centralization. For the operation of the minimum school term, the state becomes the unit of administration. Every teacher, janitor, and truck driver becomes an employee of the state. All supplies are to be purchased by the state central purchasing agency, also a creation of the 1931 legislature. All remaining one- and two-teacher schools are to be consolidated into larger ones as soon as possible, the state highway department being instructed to give special attention to the improvement of highways over which school buses operate.

It should be pointed out that school districts and school boards are not abolished by this act. The counties or districts are still responsible for the cost of constructing and repairing school buildings, the liquidation of school debt, and most of the support of terms in excess of six months. These items will require aggregate levies of not less than $14,000,000 a year, and more if the state insists on the prompt completion of the consolidation programs. For the next year or two, however, the state will be bearing about fifty-six per cent of the cost of the schools, and forty-two per cent from other than property taxes.

The Explanation. It has been the purpose of this article to review the developments which are taking place in North Carolina, and it is not its purpose either to justify or to condemn the legislation which has been enacted. It must be admitted, however, that the extreme state centralization has occasioned surprise, even alarm, in other states. North Carolina people seem neither surprised nor alarmed; they have become used to revolutionary changes; they are not afraid of experiments. Probably, however, the chief explanation for the measures which have been adopted and the readiness with which they have been accepted lies in two facts: (1) the people want tax relief, and they are willing to resort to extreme measures to secure it; (2) in recent years the state has had several excellent governors, and the people have confidence in the state government. At the same time, there have been so many scandals in local government that confidence in local self-government has been shaken.

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State Supervision of Local Fiscal Officers in Virginia. One of the achievements of the brilliant administration of Harry F. Byrd was the segregation of the sources of revenue. The governor was quite sincere and enthusiastic in his support of this principle, believing, it seemed, that it was the panacea for a great many of our tax troubles. His exuberant enthusiasm caused him to make an error, many believe, when he had written into the rather inflexible constitution of the commonwealth the provision that no state tax shall be levied on real estate and tangible personal property. The state, therefore, no longer has any interest in this kind of property, and its supervision over local fiscal officers extends only so far as they are agents of the state, assessing and collecting the state's revenue.

Each county and city has a local commissioner of the revenue, elected by the people, who assesses for the state intangible personal property, individual incomes, and money and capital, and who assesses for the local government tangible personal property, machinery and tools, and merchants' capital. The state tax commissioner[1] has forms printed and sent to each local commissioner on which all the items mentioned above are supposed to be listed at their fair market value by the taxpayer.[2] Mr. Morrissett, the present state tax commissioner, has inaugurated a plan of holding annual conventions of commissioners of the revenue where the problem of assessment and the complications of the state tax code are discussed.

While the county and city have complete local autonomy in regard to those objects set aside for local taxation, they are still the mere agents of the state as regards the assessment of those sources of revenue segregated for state taxation. For this reason, the state tax commissioner appoints an examiner of records for each judicial circuit, who, as his title indicates, examines the records of local commissioners of the revenue with special reference to those items in which the state is

[1] The reorganization act of 1927 set up a department of taxation, with a state tax commissioner appointed by the governor as executive head of the department. The act also established a department of finance with four divisions; namely, accounts and control, treasury, purchasing and printing, and motor vehicles, each division head being responsible to the governor.

[2] The general practice of undervaluing property for the purpose of taxation has resulted in inequality of taxation, and also seriously handicaps some communities in carrying out needed improvements, because the state constitution limits the borrowing power of the city and towns to eighteen per cent of the assessed value of taxable real estate.

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interested. If he finds or believes that the returns on intangibles and incomes are not properly made, he can summon the taxpayer to appear and to answer questions touching the ownership of such property.

The tax code of Virginia allows the state tax commissioner to have the salary of the local commissioners withheld in case of neglect of duty or failure to make the required reports. Furthermore, the tax code allows the state commissioner to report to the circuit court any incapacity, misconduct, or negligence of local commissioners. Presumably this provision allows ouster proceedings, but no case like this has come up in Virginia. Neither has there been any case where salary has been withheld.

Each county and city has a local treasurer, elected by the people, who collects local revenue and is used by the state to collect the state's revenue that comes from the capitation tax, intangible personal property, individual incomes, and money and capital. The collection of the state's revenue is under the general supervision of the state comptroller, who is the head of the division of accounts and control in the department of finance. The state's income collected by the local treasurer is sent to the comptroller, who deposits it to the credit of the state treasurer in approved depositories.[3]

Finally, we see that the state has tried to extend its auditing service to the one hundred counties of the commonwealth. The state has a special interest, of course, in the proper collection and accounting for its revenue. The auditor of public accounts, who is elected by the General Assembly, audits the books of local treasurers. This state audit has been handicapped by an insufficient number of auditors. But strong effort is now being exerted to overcome this handicap, because recent audits of the accounts of local fiscal officers have revealed the absolute necessity for an effective supervision of this kind.

Audits by the state auditor have revealed an amazing lack of system in the keeping of local accounts and an alarming number of defaulting county treasurers. Mr. Andrews, the state auditor, stated on March 20, before the commission on county government, that the records of many Virginia counties are so poorly kept and the methods of book-

[3] The state finance board, composed of the comptroller, the state treasurer, and the governor, select these depositories. The state's money is distributed among one hundred ninety banks scattered over the commonwealth. Prior to the reorganization act of 1927, there were forty-eight collecting and disbursing agencies with their own accounts.

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keeping so antiquated that his office frequently has to perform the double function of bookkeeping and auditing.

The state auditor's audit for the past five years has shown that thirty-nine of the one hundred Virginia county treasurers were short in their accounts. Ten of these cases resulted in the removal of the defaulting treasurer. However, the county treasurer is so strongly entrenched in the politics of the county that there has not been a single case of prosecution. On the other hand, in at least two instances, the removed treasurer was reëlected to a county office.

It should be stated, however, in fairness to these county officers, that a shortage does not necessarily mean a criminally-minded county treasurer bent on embezzling public funds. A shortage may mean in many instances a good-natured treasurer who, in order to help out a neighbor, holds out his tax ticket or marks it paid, expecting, of course, that it will be paid in the near future. However, it is difficult to distinguish between criminal intent and kind-heartedness, and in some instances removal not only is justified, but is a necessity.

The last instance when this power was exercised was about a year ago, when Governor Pollard removed J. M. Weston, the treasurer of Lee county, whose books showed a default of $92,000. Weston, however, refused to vacate the office in favor of C. D. Fugate, the governor's appointee; whereupon the latter asked the supreme court of appeals for a writ of mandamus to force Weston to turn over the records of the office.

On March 20, 1931, the supreme court of appeals, by a four to three decision, refused to issue the writ. The decision therefore set aside the section of the code under which the governor had acted,[4] because the court believed that "the ultimate determination of the existence of cause for the removal of a constitutional officer is essentially a judicial function." In addition to this reason for holding the statute invalid, two of the four justices held that the right to hold an office is a property right which cannot be confiscated without due process or "without judicial hearing after due notice."

The majority opinion reads in part: "It is more important that a fundamental principle of government [the separation of powers]

[4] Sec. 366 gives the governor power to suspend the treasurer of any county or city for failure to perform duties required by law with reference to collection of the revenues of the state or of the county or city. The General Assembly, by joint resolution, can restore to office.

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should be preserved than that some guilty office-holder should be removed. To remove a man from office because of embezzlement without giving him a day in court runs counter to those fundamental instincts of fair dealing which lie at the basis of all governments.'' The majority opinion goes on to say: ''It is competent for the legislature to vest in the governor power to suspend from office a delinquent office-holder for cause, but somewhere and at some time before final judgment, it is imperatively necessary that he be given a day in court. The statute in judgment does not do this, but reserves for the legislature to pass upon this executive suspension. But the question as to whether Weston has embezzled funds is a judicial question. This is the basis of his discharge, and on it he is entitled to be heard, and to be heard by a court.''

Chief Justice Prentis wrote a vigorous dissenting opinion. He believed that notice in this case was implied because two official audits had shown Weston's dereliction and he had ample opportunity to disprove their correctness, which he failed to do. The chief justice goes on to say: ''The purpose of this statute is to provide a summary remedy to correct public wrongs. It seems to me that this decision is a backward step which denies essential governmental powers and seriously hampers the legislative and executive departments in their effort to provide orderly government.''

Experience in Virginia, therefore, seems to show that the counties in particular cannot be turned loose to enjoy complete autonomy or home rule in regard to fiscal affairs. The rather inefficient state supervision sketched above shows conditions that border almost on chaos. In the first place, experience shows that instead of relinquishing state supervision over the assessment of property for the purpose of taxation, this supervision should be strengthened. Instead of popular election, the local commissioners of the revenue should be nominated by the state tax commissioner and appointed by the county board of supervisors or the county manager in those counties that have such officers. The state tax commissioner should be given the power, by a constitutional amendment if necessary, to remove commissioners of the revenue for proper cause.

''Not in recent years has the cause of good government in Virginia received a more decided setback,'' is the way that a distinguished Virginia editor describes the effect of the decision in the Weston case. A constitutional amendment will remedy the damage done by this case;

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that is, if a summary remedy is wanted to correct public wrongs. Otherwise, summary action will be retarded by the "customary delays incident to judicial action." The people of the commonwealth, no doubt, are now aware of the need of an effective state audit over local officers who handle public money, and there will be no trouble at the next meeting of the General Assembly in securing an appropriation that will allow an increase in the state's auditing staff sufficient for this purpose.

A thorough supervision of local accounts will also assist the rural local governments to comply with the mandatory act of the General Assembly of 1926 which requires every county and city to prepare a budget. In 1927, the state generously extended its budget-making facilities to the local governments, and, complying with this law, Mr. Bradford, director of the division of the budget, had budget forms printed and sent to the county boards of supervisors. But only one Virginia county in five has been able to comply properly with the law, because of poor accounting methods and lack of an officer qualified to do the rather tedious and technical work of preparing budgets.

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County Managerial Tendencies in Missouri.[1] During recent years, the county manager plan has been growing steadily in popularity. This is shown by the literature on the subject, and, to a lesser degree, by the adoption of the system in a number of counties. Where the plan has been tried, the duties of manager have generally been conferred upon some existing county officer. In North Carolina and Virginia, for instance, different counties have experimented with (1) a member of the county board, generally the chairman, as manager, (2) a financial clerk, auditor, or accountant as manager, and (3) an engineer-manager.[2] While the duties of the office have varied somewhat in the different types, each conforms in certain essential principles to the plan as outlined in the "model county manager law."[3]

In Missouri, the presiding judge of the county court, the county clerk, and the highway engineer correspond to the above officers; and should the state adopt a county-manager law, the duties of manager

[1] Based on a study of thirty-three rural counties.

[2] Wylie Kilpatrick, *County Management* (Charlottesville, Va., 1929); Paul W. Wager and Howard P. Jones, "Signs of Progress in County Government," *Nat. Munic. Rev.*, Aug., 1930.

[3] Supplement, *Nat. Munic. Rev.*, Aug., 1930.

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would probably be conferred upon one of these three officials. In fact, first-hand information secured in 1929 by interviewing county officials in thirty-three of the 114 counties, attending sessions of the county court, and studying official records shows that the county clerk and highway engineer have already, in some instances, developed general executive powers of some importance. This is true, for example, in awarding contracts, purchasing supplies, auditing claims, reports, and settlements, and determining the county tax rate. Before discussing these functions, the legal status of the county clerk and the engineer should be explained.

County Clerk. The state constitution provides, in the article on the judicial department, for the popular election of the members and clerk of the county court.[4] Thus, the clerk's position as secretary of the court is constitutional, and largely beyond legislative control so long as the powers of the court itself remain unchanged. His administrative duties concerning taxation, elections, and miscellaneous matters are conferred by statute, and are therefore subject to legislative control.

In addition to the clerk and three county judges, there are from ten to twelve popularly elected officers in each county.[5] These officials serve for four years, except the associate county judges and prosecuting attorney, whose terms are two years. The principal functions of the other elective officers are prescribed by statute, placing them beyond effective supervision and control of the county court. Needless to say, this decentralization in county government places the county clerk, in relation to the court and other elective officials, in a very different position from that of a county manager. Those clerks who exercise certain managerial powers are therefore acting extra-legally, though with the consent of the county court and the acquiescence of the other officials.

[4] *Constitution* (1875), VI, 36 and 39. The county court is primarily an administrative and supervisory body, its functions corresponding to those of the county board of commissioners or supervisors in other states. Its name is a hold-over from earlier days when the court also exercised important judicial functions. It is composed of three members: a presiding judge elected from the county at large for four years, and two associate judges elected from districts for two years. The president, however, has little more authority than an associate member. Eighty-nine per cent of the county judges in the thirty-three counties visited were farmers or retired farmers.

[5] *R. S. Mo.* (1919), Secs. 293, 729, 2110, 2541, 2569, 5916, 9528, 9597, 10,560, 11,344, 11,629, 12,709, 12,759, and 12,875.

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County Highway Engineer. Except in those counties where the county highway engineer law has been suspended,[6] the legal status of the engineer is quite different from that of the county clerk. The engineer is appointed by the county court for an indefinite term, and he need not be a resident of the county. The court in Marion county, for example, secured its engineer from an adjoining county. The law makes the engineer an adviser of the county court in the formulation of road policies, and its agent in seeing that such policies are properly carried out. While road overseers are appointed by the court, the engineer has direct supervision over their work in building roads, bridges, and culverts in the common road districts. The engineer is the legal custodian of all road machinery and equipment belonging to the county or to such a district. The law further provides that he shall examine and approve all claims against the road and bridge funds before they are presented to the county court. In addition to these functions, the engineer in three of the thirty-three counties studied is the purchasing agent for all road and bridge supplies used by road overseers. Certainly, the handling of road matters in Marion county is in harmony with the recent county managerial ideas. The same is true in the counties of Adair and Holt, except that the former has one and the latter four special road districts in which the county court and engineer have no authority. The writer is informed that similar arrangements exist in a number of counties not visited.

Awarding Contracts. The procedure to be followed by the county court in awarding a contract is outlined clearly in the statutes. It includes advertisement for sealed bids; the filing, opening, and consideration of bids; and the letting and the writing of the contract. All responsibility in awarding the contract devolves upon the county court, except that the statutes provide that the prosecuting attorney shall "draw all contracts relating to the business of the county."[7] As a rule, the prosecuting attorney prepares only the more technical contracts, the others being written by the county clerk. In three of the

[6] Optional laws are very common in Missouri. If this particular law is suspended, the elective surveyor becomes *ex-officio* engineer. At present, the surveyor is engineer in ninety-two counties, either by appointment of the county court or because the law has been suspended. In the other twenty-two counties, there is a separate county highway engineer. See *Official Manual, Mo.* (1929-30), pp. 168-197, and *R. S. Mo.* (1919), Secs. 10,782-10,799 (especially 10,787-10,796).

[7] *R. S. Mo.* (1919), Secs. 738, 9465, 9503-9508, and 9582-9589.

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counties visited, the attorney writes all county contracts; while in four others, he prepares none of them. In the latter counties, the clerk not only prepares all of the contracts, but largely assumes the responsibility of the county court in letting them. Hence, in awarding contracts the position of the county clerk varies from a mere secretary to the county court to that of an agent for the court, or an embryo county manager. The latter situation exists in only four of the thirty-three counties investigated.

Purchasing Supplies. Supplies for county offices in Missouri are generally purchased independently by each individual county officer. Recently, however, a number of county courts have attempted to control purchases by administrative officers by requiring such authorities to file a requisition for supplies with the county clerk. Such an order, issued by the county court of Ste. Genevieve county, was declared illegal in the opinion rendered by the attorney-general on February 21, 1928.[8] In denying the authority of a county court to constitute itself a purchasing agent for the county, the attorney-general explained that elective officers are on a par with the court in purchasing supplies. He stated further that the county court must pay for supplies purchased by such an officer, if the articles secured and prices charged are "reasonable." In the absence of statutory authority to appoint a purchasing agent, this opinion has been accepted by the county courts as a correct statement of the law.

It is interesting, however, and perhaps significant, that, in spite of the above situation, purchasing is more or less centralized in several of the thirty-three rural counties studied. In seven of them, the county clerk buys practically all office supplies. In one case, a presiding judge purchases all office and road supplies for the county. In three counties, the highway engineer is the purchasing agent for all road and bridge materials; while in a few others the court itself buys most of the road supplies. Thus it may be seen that centralized purchasing has been introduced in several counties, although the duties of purchasing agent devolve in different instances upon the county court, presiding judge, county clerk, and highway engineer.

Auditing Claims, Reports, and Settlements. It is a duty of the county court as an administrative body to pass upon all claims against

[8] "Authority of county court to constitute itself purchasing agent for the county . . . denied." *Opinions of Attorney-General,* February 21, 1928. Also see *Opinion* of August 26, 1927, "County is liable for office supplies of county collector."

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the county.[9] It also receives various financial reports from county officers and makes periodic settlements with them. In most cases, this auditing work is handled in a haphazard and unbusinesslike manner. As a rule, the court merely requires a bill for supplies to be signed by the officer who purchased and received them. Though lacking legal authority or responsibility, the county clerk, on his own initiative, sometimes attempts to verify the claims when they are filed in his office. Of course, only a few clerks make a very careful or thorough investigation. Similarly, only a few carefully check and verify, for the county court, the reports and settlements of other county officers. In discussing this work, one clerk said: "I make the settlement with the county collector, and the court approves it." His aggressive (and commendable) attitude may in part explain why he "did not choose" to run again in 1930. Certainly, a county clerk must be something of a diplomat if he carefully examines and verifies the reports of other elective officers without offending them.

Budgeting: Fixing the County Tax Rate. The statutes provide that "the county court shall ascertain the sum necessary to be raised for county purposes, and fix the rate of taxes on the several subjects of taxation so as to raise the required sum."[10] This provision leaves the court to its own devices in ascertaining the sum necessary, justifying but not requiring the preparation of a county budget.

Another provision requires the county court, at its May term, to apportion the county revenue to five separate funds, i.e., paupers and insane; roads and bridges; salaries of county officials; fees for grand jurors, petit jurors, witnesses, and election judges and clerks; and a contingent fund for other current expenses of the county.[11] The contingent fund must not exceed one-fifth of the total revenue for county purposes for any one year. Such an apportionment, if made carefully, would practically require the preparation of a county budget. However, this provision of the statutes, although mandatory in form, is frequently ignored.

In each of the thirty-three counties visited, an effort was made to find out how the county court estimates expenditures for the purpose of fixing the county tax rate. In two-thirds of these counties, the court relies almost entirely upon past expenditures. Detailed information

[9] *R. S. Mo.* (1919), Secs. 735, 2574, 9509, 9547-9560, 9606-9617, 10,591, 12,910-12,924, and 12,982-12,990; and *Constitution* (1875), IX, 13.

[10] *R. S. Mo.* (1919), Sec. 12,863.

[11] *Ibid.*, Secs. 12,866 and 12,876.

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concerning such expenditures should be available in the financial statement which the statutes require the county court to prepare and publish each year.[12] Incidentally, this statement is generally prepared by the county clerk, or a deputy, the court allowing the clerk additional compensation for the work. In about one-third of the counties, the clerk also estimates for the court the probable revenue and expenditures for the ensuing year. In at least three counties, the data are worked out in sufficient detail to be called a "budget." In so far as this particular function of a county manager is being performed in the counties studied, it devolves upon the county clerk.

Conclusion. It is not contended that any particular county clerk or highway engineer is a county manager, but rather that managerial tendencies are evident in certain instances in the work of these officials. In at least three of the counties studied, the highway engineer exercises what might be considered as managerial powers concerning one county function—the building and maintenance of county roads and bridges. The official relations, as provided by law, between the county court as a policy-determining body and the engineer as its adviser and agent are also in harmony with recent managerial ideas, except in those counties where the engineer's authority has been invalidated by the voters. This may be done by suspending the county highway engineer law, or by organizing so many special road districts that the engineer has scant resources or territory under his control.

In contrast with the appointive highway engineer, the county clerk is elected popularly, along with a dozen or more other county officials, most of whom have authority to purchase independently their necessary office supplies. In spite of these handicaps, several county clerks perform one or more functions that would ordinarily devolve upon a county manager. This is true of at least three clerks in preparing a budget, four in awarding contracts, seven in purchasing office supplies, and a half-dozen or more in auditing claims, reports, and settlements. Is it possible that the managerial concept possesses certain inherent qualities which cause it to take root even in unfertile ground?

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County Managership Proposed in Texas. The regular session of the Texas legislature which began in January of this year had before it a proposal for a constitutional amendment to permit counties

[12] *Ibid.*, Secs. 9563-9564.

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to adopt the county manager plan of government. The resolution providing for submitting the question to the voters at the regular election in 1932 passed the House by the required two-thirds majority, but failed in the Senate by a single vote.[1]

The amendment would have empowered counties having a population of over 60,000, on a favorable vote of their qualified voters, to draw up home-rule charters for themselves. On a two-thirds vote of each house of the legislature, all other counties were to have the same privilege. The amendment also carried a grant of power to cities and counties to consolidate the two governments. To carry out the latter provision, the rural and urban votes were to be counted separately; and a majority of the urban and a two-thirds majority of the rural votes were required.[2] The larger majority required in the rural sections was a concession to the natural antipathy to a "one-man government" found among rural voters.

The chief reason for the proposal is to be found in the present system of county government, which is admittedly cumbersome and grossly inefficient. The arguments for a change center around two points: (1) the present organization of the county board, and (2) the inherent evils in the fee system as a basis for compensating county officers. A change in the county board is no doubt the place where the reform should begin, but the fee system serves as a better rallying point for the opposition to the present system. This method of paying county officers, as in many of the American states, is a product of growth from the beginning of county government in the state, and has been built upon by successive general and special laws until it is now a complex system which most county officers would be glad to be rid of if a reasonable salary schedule could be substituted. This attitude of officers does not arise from the belief that a salary schedule higher than the present rate of pay would be established (it would be considerably lower in large counties), but such a change would stop the rather widespread criticism of county officials and would give them a fixed income and a more secure tenure.

The present fee law, enacted in 1930 following a legislative investigation, allows a maximum of $12,500 in the largest counties, $8,000 in the second bracket, and $5,500 in the third. In the smallest counties,

[1] *Senate Journal, Forty-second Legislature,* May 21, 1931.
[2] House Joint Resolution, No. 25 (1931).

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the maximum is $2,250 for the principal officers.[3] Under the laws prior to the present one, some officers in the larger counties had incomes from fees of $25,000 to $40,000 a year, and it was not uncommon for the sheriff in relatively small counties to make $10,000 to $15,000 from his fees of office. This was made possible by reason of the fact that his fee for feeding prisoners was not an "accountable fee" of office. He accounted to no one for these fees, and if he could prevail upon the county board to set the per day allowance high enough, he could double, or even triple, the actual cost to him for furnishing food for the jail. In the mind of the voters, the present fee law leaves much to be desired.

The authors of the proposed constitutional amendment were, however, striking more deeply than the abolition of the fee system. They were attempting to reorganize the county board, which, as at present organized, is an anomaly. They were also attempting to shorten the ballot by making many of the officers appointive, a change that is unpopular in the rural sections but would meet with enthusiasm in the larger counties having cities. The county judge, who is chairman of the county board, is overburdened with quasi-judicial functions and has insufficient time for the business affairs of the county. The other four members of the board, called county commissioners, are really district representatives, who, because of the present road laws, are nothing more than road supervisors, and thus are little interested in the general affairs of the county. They are, furthermore, practically independent of each other and of the county judge in the matter of spending the road funds allotted to their districts. Much waste is the result. This virtual independence of the commissioners makes the judge a mere figurehead as chairman of the board; he votes in most counties only in case of a tie. In many, he does not even take a stand on public questions. The legislative investigation and the publicity attending the proposed amendment have caused the question of the present county government system to be one of the leading topics of discussion in the newspapers of the state, and lead those sponsoring the change to believe that the next legislature will submit the proposal to the people.

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[3] *General Laws, Forty-first Legislature,* Fourth and Fifth Called Sessions, p. 30 (1930).

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Constitutional Developments in China. The National People's Convention held in May, 1931, and the provisional constitution adopted by it, mark a stage in the development of modern political institutions in China. But it is as yet too early to determine how successful these will be in establishing a permanently stable government.

Calling the Convention was itself an indication that a relative degree of stability had been attained, following the agreement between the Nanking government and Marshal Chang Hsueh-liang in Manchuria and the defeat of the northern opposition under Generals Feng and Yen. But the decision to call the Convention developed internal differences in Nanking, leading to the retirement of Hu Han-min, head of the Legislative Yuan, who has been kept under guard. This in turn aroused distrust in Canton, which led to the open revolt of several southern provinces on the eve of the Convention's meeting. This movement has come about by one of the curious realignments of political leaders and generals, bringing together the more conservative and more radical elements in the Kuomintang, with suggestions of possible combinations with the recently defeated northern generals and other opposition elements in the interior.

Comparatively little information is available as to the process of selecting the delegates. A law issued by the Nanking government provided for their election in provinces and municipalities by occupational or functional organizations—agricultural unions, industrial associations, merchant gilds, educational institutions and professional associations, and the local Kuomintang party organizations. A total of 520 delegates was authorized: 450 from the 22 provinces (from 5 to 30 each), 22 from the larger cities (Shanghai, Nanking, Peiping, Tientsin, Hankow, Tsingtau, and Harbin), 12 from Mongolia, 10 from Tibet, and 26 from the overseas Chinese. No definite data have been given as to the legal qualifications of the primary voters; and but little of the actual conduct of the elections.

Press reports of the elections in some sections indicate that, while far short of a general participation by the mass of the people, there was, on the face of the returns, a considerable degree of popular voting, and more than might be expected from the conditions and previous experience of China. The report of the elections in Manchuria give

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more information than from any other province. Here, elections were conducted in 54 of the 58 districts, by a total of 165 organizations, as follows: 54 agricultural unions, 4 industrial organizations, 51 merchant gilds, 50 educational and professional organizations, and the party organizations. Each of these elected three delegates, although the highest vote in the different groups ranged from 16,000 for the industrial and educational groups to 300,000 for the agricultural unions. Only the votes for delegates elected were publicly reported, with no data as to opposing candidates.[1]

These figures indicate that the rural agricultural voters were relatively under-represented; on the other hand, in contrast with the Russian soviet system, business and educational organizations form a substantial element. One of the delegates elected by the industrial organizations (labor unions) was the manager of a cotton mill; and one of the educational delegates was a university professor.

Reports from several of the larger cities may also be noted. In Peiping there were 102,000 voters, about one-tenth of the population. Of these, three-fourths (76,000) were in the peasants' union, 7,779 in the labor unions, and 2,700 in the group of educational associations and liberal professions. In all, 51,000 votes were cast, two delegates receiving a clear majority. Of the persons elected, one was a bank president, one chairman of the National Central University, and two party leaders. In Tientsin, there were 60,000 voters. Two-thirds were in the class of merchants and shop-keepers; but a special order limiting the voting to proprietors or heads of firms reduced the electorate to 30,000, and only 17,267 votes were cast. The labor unions were the most numerous; these were said to be two-thirds illiterate, and names on the ballots were written by the election clerks. In Nanking, there were 46,000 votes cast, by 150 organizations in 16 districts. None of those elected had a majority of the total vote, and one had less than a fifth of the total.[2]

The correspondent of one of the leading English newspapers in Shanghai reported that the delegates were largely nominated by the government.[3] Reports from Shantung, Shensi, and Tsinan stated that the voters were given a list of candidates to be written on the ballot papers. From Szechuan, the educational delegates were said to be igno-

[1] *The Leader* (Peiping), April 28, 1931.
[2] *Ibid.*, April 26, 28, 1931.
[3] *North China Herald*, weekly ed., May 12, 1931.

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rant of education, the chamber of commerce delegate was not a merchant, and the labor and peasant delegates were military officers.

The internal organization and procedure of the Convention was also regulated by the law promulgated by the government. This provided for an oath to be taken by the members, and the election of a *præsidium* of seven to nine members to arrange the agenda and control the protection and discipline of members, and to preside in turn; also for a secretary-general, secretarial staff, and guards. The Convention was to begin when a majority of delegates arrived in Nanking, at a date to be fixed by the government. The meeting should continue for ten to fifteen days, but might be extended. Proceedings should ordinarily be open, but secret sessions might be held on motion of one-third of the delegates or action of the *præsidium*. A majority of delegates should constitute a quorum, and resolutions should be adopted by a majority vote, with a casting vote by the chairman in case of a tie; but a two-thirds vote might be required on motion of one-third or by the *præsidium* on important resolutions. There were to be committees on credentials and proposals and other special committees. Freedom of speech in the convention was specified, within the scope of the resolutions, but subject to responsibility if published.[4]

The Convention opened on May 5 at nine o'clock, in the hall of Nanking University, with an attendance of 447 delegates (out of 520), 44 members of the Central Executive Committee of the Kuomintang, and a number of visitors. In an opening address, President Chiang Kai-shek gave an extended account of the history of the revolutionary movement in four periods, On the next day, the *præsidium* was selected, including Marshal Chang Hsueh-liang from Manchuria, representing the National Government, the chairman of the Central Executive Committee of the Kuomintang, and seven others elected by the Convention. The elected members included three officials in the government, the secretary-general of the Kuomintang, the Peiping bank president, a farmers' representative from Canton, and one woman (Miss Lui Shun-yi), a labor representative from Shensi. The latter was the only member on the *præsidium* from the interior of China. Nine committees were established.

Plenary sessions of the Convention were held daily, with a few exceptions. The attendance ranged from a minimum of 403 delegates to 493, with members of the Central Executive Committee of the Kuomin-

[4] *The China Press* (Shanghai), April 27, 1931.

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tang, and from 40 to 70 visitors as observers. In addition to the delegates elected under the Convention law, ten women and forty others were admitted as members, the latter including the Panchen Lama, the spiritual head of the Buddhists, from Tibet.

A draft of the proposed constitution, prepared by a committee of the government, was presented to the Convention on May 8 by the chairman of the Examination Yuan. After some discussion and presentation of proposed amendments, this was referred to the committee on proposals. Four days later, the provisional constitution, with amendments by the committee, was reported to the Convention and adopted. Seven new articles and a number of minor amendments to the original draft had been made. These dealt with the livelihood and education of the people, annual budgets and financial statements, and the interpretation of the constitution.

In addition to the constitution, a considerable number of other matters were discussed and acted on, including resolutions and declarations of policy. In these respects, the People's Convention had some resemblance to an American party convention; but with more appearance of authority to declare and adopt legal measures for the nation as a whole.

A lengthy report on the achievements of the government was submitted, in three volumes, of 150,000 words. This dealt with military affairs, legislation, judicial and legal developments, the recently established examination and control yuans, and reconstruction work for river conservancy and the improvement of navigation. This report was referred to a committee and later approved.

Early in the Convention, a resolution for the immediate abrogation of unequal treaties was adopted and referred to a committee to prepare a manifesto on the subject, which was reported and adopted a few days later.

Extended proposals for programs on educational policy, national industrial reconstruction, agricultural development, and a national economic council were presented and referred to committees; and later the first two were reported to the convention, discussed, and adopted. Resolutions were adopted accepting the teachings of Sun Yat-sen as the basis of government.

Other resolutions, presented and adopted in principle, called for the early promulgation of the new salt-tax law, and urged the government to induce overseas Chinese to invest in domestic industries, to adopt relief measures for unemployment, to prepare plans for aiding the silk

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and tea industries, and to establish a government translation bureau.

Another series of resolutions in general terms dealt with a variety of topics. Three related to Mongolia, asking for appropriations for education and cultural development, the establishment of self-government, and the retention of the tribal system. One called for a renewal of negotiations with foreign governments on unequal treatment of overseas Chinese. Others provided for a revision of the membership of the national government, and for the promulgation of the provisional constitution on June 10. One proposed resolution, for the development of the outlying provinces of Kansu, Kirin, and Ningsha, was referred to the government.

Telegrams were approved urging the peaceful unification of the country; and it was voted to send telegrams to the military leaders in Kwangtung not to oppose the central government, and to the Kwangtung people to support national unification.

Final adjournment of the Convention took place on May 19.[5]

The provisional constitution[6] (*Yueh Fa*) adopted by the People's Convention is a lengthy document, with a preamble and 89 articles grouped in eight chapters. Chapter I, of five articles, deals with general principles, defining the territory of China, announcing the sovereignty of the people in a unified republic, describing the national flag, and declaring Nanking to be the capital.

Chapter II, on Rights and Duties, includes 22 articles, setting forth the customary declarations of individual rights, with some distinctive statements. In two respects it resembles the new republican constitution of Germany, in contrast with the declarations in American and revolutionary French constitutions. Most of the rights are not stated as absolute and indefeasible, but are subject to regulation by law. Exceptions are liberty of conscience and the right of petition, for which no restrictions are expressed. In the second place is the statement of duties as well as rights, specifying the payment of taxes, military service, and obedience to the government.

Chapter III, on Political Tutelage, consists of five articles, dealing with the provisional character of the system, as a period of training for the permanent constitution, under the control of the National Congress and Central Executive Committee of the Kuomintang party.

[5] Proceedings reported in *The China Press,* and *The China Weekly Review,* May 9, 16, 23, 30.

[6] Printed in *The China Press* (Shanghai), May 14, 1931, and *The Chinese Social and Political Science Review,* XV, No. 2 (July, 1931).

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Chapter IV on the People's Livelihood and Chapter V on Education deal with matters of governmental policy rather than organization, and set forth the general principles of governmental activity in the development of the economic well-being and education of the people. These follow the lines of Sun Yat-sen's teachings, and may be called distinctly socialistic in character; but individualistic and coöperative enterprises are recognized. Some articles in these chapters were added by the Convention to the draft of the constitution prepared by the government.

Chapter VI includes six articles on the division of power between the central and local governments; but this is based on the general principle of an equilibrium of power, to be defined by law; and there is no attempt at a detailed enumeration of specific powers for the different grades of authorities.

Chapter VII on the Organization of the Government, with 19 articles, is the longest chapter. While the principle of an equilibrium of power between central and local governments has been declared in the preceding chapter, Article 65 in this chapter provides that the national government is to exercise all governing powers, and specifies in particular the command of military forces and control of foreign relations. The machinery of central government is continued practically as already organized, with a president and state council appointed by the Central Executive Committee of the Kuomintang, and five yuans (executive, legislative, judicial, examination, and control), the chairmen and ministers to be appointed by the national government at the instance of the president. This strengthens the position of the president to some extent, but does not in form go so far as some had expected. The precise organization of the various agencies of the national government is left to be determined by law.

Six articles in this chapter on local government authorize provincial, district, and municipal governments, and separate arrangements for Mongolia and Tibet; but the machinery for these is to be determined by law. Provincial assemblies may elect provincial governors as the provinces reach the period of constitutionalism, and preparatory committees for district autonomy are authorized.

The final chapter (VIII), entitled Annex, contains provisions similar to those in the schedule of American constitutions. The provisional constitution is to be promulgated by the national government, and all conflicting laws are to be null and void. The power of interpreting the

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constitution is to be exercised by the Central Executive Committee of the Kuomintang. A draft of a permanent constitution is to be prepared by the Legislative Yuan, on the basis of the Outline of National Reconstruction, and to be published. When district autonomy has been completely established in a majority of the provinces, a national People's Congress is to be called to decide on the adoption of the permanent constitution.

Viewed as a whole, the provisional constitution mainly confirms the system of government already set up at Nanking, with some elaborations and minor changes. Its adoption by the People's Convention gives it the appearance of a larger popular support than the Kuomintang party; but all the agencies of government, both central and local, are to be under the control of the party organs. In practice, this will be limited by the need for compromise and coöperation with the military and political leaders in actual control of different regions.

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The Sovereignty of the Native Indian States. Before British India can ever be given complete home rule, the knotty problem of the relation of the native states to such a dominion must be considered. Nationalists in British India maintain that whenever complete dominion status is offered to their country, it will assume in respect to the states the same position that the crown holds toward them; meanwhile, spokesmen for the princes insist that such a step can and should never be taken without their consent. Whatever viewpoint prevails, before India can function as an independent, self-sufficient unit, some arrangement, presumably of a federal character, must certainly be effected.

An analysis of the numerous views held concerning the legal relation of the native states to the British Empire enables one to discern three principal theories: first, that held by most crown officials and Indian nationalists, which maintains the sovereignty of the crown; second, the view of the Indian princes, which attempts to prove the retention by them of the "residuary" sovereignty; and, third, the intermediate opinion of many publicists, both of Europe and of India, which asserts the existence of a divided sovereignty.[1]

[1] Sir William Lee-Warner, *The Native States of India;* J. Ramsay MacDonald, *The Government of India;* K. M. Panikkar, *Indian States and the Government of India.*

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Desiring to ascertain the location of the legal sovereign in the political tangle presented by the apparently anomalous position of the princes, one is obliged to discard the theory of a divided sovereignty. Speaking in juridical terms, it is necessary to posit in some agency the source of legal sovereignty, even though its political exercise may be vested in more than one entity. There thus remains but two diametrically opposed theories, one that predicates the existence of supreme legal authority in the crown, and the other which confers it upon the rulers of the Indian states.

Claimants for the crown present their arguments in the "Report of the Indian States Committee," commonly termed the "Butler Report." This is the most recent expression of official British opinion on the matter, and in it the legal advisers of the crown base the sovereignty of the crown on three grounds: first, the succession by the crown to the sovereign powers held at one time by the now defunct Moghul Empire; second, treaties existing between the crown and each Indian prince; and, third, "usage, sufferance, and decisions of the government of India and the secretary of state embodied in actual practice."[2]

After vigorously insisting upon the sovereignty of the crown, the Butler Report completes its survey by recommending that the rights of the crown should not be bestowed upon British India without the consent of the native rulers; the Simon Report contains an expression of the same recommendation. Surely, in view of the sovereign claims of the crown, such an admission can only be a concession on the part of Great Britain as a matter of expediency, and not an acknowledgement of a legal right existing inherently in the position of the princes. No other interpretation can be upheld. If the crown is sovereign, the princes can have no legal right of decision in the matter.

Meanwhile, the case for the Indian princes has been stated very ably in a report entitled "The British Crown and the Indian States," in which the princes have attempted to refute the contentions of the crown. They refuse to admit the legality of a succession to the pretensions of the Moghuls, or the validity of such terms as "usage" and "political practice" when serving as a foundation for a legal argument. The only rights conceded by them to the crown are those arising from express treaty provisions. Therefore they conclude that they have retained through the years the "residuary" sovereignty, and that their right to enter, or to withhold from joining, a proposed federation is a

[2] Butler Report, p. 13.

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legal right, and not merely a favor of the crown which may at any moment be revoked.

Indian Nationalists of British India are extremely averse to recognizing the sovereign rights of the states, and exhibit great impatience when such a claim is put forward by a prince. Herein lies the necessity of ascertaining the present legal position of the princes. The rulers cannot rely upon a temporary admission by the crown that their consent should be sought before incorporation into a federation while at the same time this same authority claims sovereign rights over them. It is possible that under the influence of zealous nationalist propaganda, such as is now being conducted in India, the crown will confer upon British India its so-called sovereign rights over the states without their consent. This the states are most anxious to prevent, and they are attempting to prove the invalidity of the position that they are devoid of the legal power to guide their own destinies.

Inasmuch as there are nearly six hundred of the states, varying widely in size and importance, and bound to the crown by engagements differing in degree and effect, a complete classification is practically impossible. Therefore the only states considered in the present note are those existing when British rule was first established in India, and which contracted with the crown on a basis of equality. States set up by act of the crown, and legally subject to its commands, are excluded. This last group comprises the larger number, but are considered both by the princes and by the crown as being merely feudatories of the British authority.

Essaying an opinion as to the status of the larger states under the norms of political science, one is confronted with a maze of diverse situations and arguments. Many publicists have termed them semi-sovereign states, or states under suzerainty; some have even said that they are purely administrative units of the British Empire, irrevocably attached to the crown by constitutional ties. An effort will here be made to prove that, contrary to the opinion of practically all writers on the subject, the major states are sovereign, in the Austinian sense of that term. The writer realizes that such a position predicates concerning the states the existence of an independence which cannot legally be curtailed or limited; it connotes an indivisible sovereignty in whose jurisdiction no other power exists which may legally impair its supremacy.

Historically, it appears that an important premise of the British

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crown, claiming a succession to the sovereignty possessed over the states by the Moghul Empire, is incorrect. When the crown, displacing the Company in 1858, assumed its position in regard to the states, the Moghul Empire had disappeared. The sovereignty which the crown insists had been posited in the Moghul Empire must necessarily have disappeared also. And even if the crown could prove historically that rights of the Moghul Empire passed into its hands in 1876, it could not lay claim to possession of sovereign rights over the states. The reason for this statement is that the Moghul emperor, at the time when the Company commenced negotiating with the states, did not possess legal sovereignty in regard to them. Its superiority, as early as 1870, had been overcome by the Mahratta Confederacy, which merely exerted a *de facto* supremacy over the states, exacting tribute but permitting complete independence in local affairs.

Aside from this, the practices of the crown, subsequent to the Durbar at Delhi in 1876, when it asserted sovereignty over the states, were inconsistent with a logical development of its sovereign pretensions. If the crown had been legally the sovereign, it would have dealt with the states by unilateral acts through the government of India. For the maintenance of its declared position of sovereignty, the crown would have discontinued the practice of engaging in separate treaties with each state when it desired certain practices to be initiated. It would have been unnecessary for it to do so. Declarations by an act of Parliament or the government of India would have been sufficient to have legal force in the territories of the princes. A sovereign state does not deal with a province or colony by treaty; it indicates its wishes by a legislative act which has immediate legal force and is actionable in courts instituted by the same legislative authority. Therefore, even if Great Britain had succeeded to the privileges of the Moghuls, she disavowed the possession of sovereign rights over the princes by her subsequent acts.

The treaties at present existing between the crown and the states permit the government of India to control foreign relations of all the states and to provide for the common defense; they also give it control over the larger railroads and certain other economic interests in the states. Let it be emphasized that in these states all activities of the government of India have been permitted to it by express treaty provision. Such privileges are not an impairment of the legal sovereignty of the states. By the treaties the princes have delegated—not ceded—to the

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paramount power the privilege of exercising for them in certain instances such powers of sovereignty as they have considered convenient to confer upon it. That such treaties do not legally create a division of sovereign powers is evidenced in the following quotation from Dr. W. W. Willoughby: " . . . by treaties it [the sovereign state] may give its undertaking to other states not to exercise certain of its powers, or to exercise them only in certain ways, but these self-set limitations it may legally—if not morally—escape from by an exercise of that same sovereign will in pursuance of which they were created."[3]

Accepting the Austinian concept of sovereignty, it follows that treaties are not a legal limitation upon the sovereignty of the states entering into them; the same power that agreed to enter into such a contract can at any time, without acting in any manner illegally, abrogate the agreement. In rescinding a contractual obligation because of expediency, a state may be morally at fault; but no municipal or international court would recognize such abrogation as a basis for legal action. In delegating to the crown certain powers of action, the Indian states have not impaired the absolute character of their sovereignty.

The claim of the legal subordination of the states to the crown rests on still another foundation. This argument consists of an assertion by adherents of the crown that a great mass of political practice has arisen, through usage and sufferance, in which the princes have acquiesced, and that by prescriptive rights such usage has reached the stage of legality. The Butler Report says: "In all causes, usage and sufferance have operated to determine questions on which the treaties, engagements, and *sanads* are silent; they have been a constant factor in the interpretation of these treaties, engagements, and *sanads;* and they have thus consolidated the position of the crown as a paramount power."[4]

What do the lawyers for the crown wish to imply when they mention the terms "usage" and "sufferance"? Surely it can be nothing other than what is meant by international lawyers when speaking of usages in relations between independent states. If the states were legally subordinate, such terms would be superfluous; a proclamation of the organ exercising sovereign power would be sufficient to govern the actions or obedience of the states. But, again, the crown cannot maintain, even in an international sense, the growth of usage as a basis for legal claim.

[3] *Fundamental Concepts of Public Law*, p. 181.

[4] Butler Report, p. 24.

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Usage, in its ordinary connotation, arises from the mutual consent and practices of independent states. It represents political practice arrived at by states in a leisurely manner and acquiesced in by both parties without the exercise by one of an overwhelming force over the other. This has not been true in India. The usage mentioned here is purely the result of a policy of expediency—perhaps beneficently exercised for the common good, but imposed upon the princes in the face of their opposition. This is not usage, and cannot be legally justified, even though it has necessarily been finally agreed to by the rulers of the states. "No physical force of coercion, however overwhelmingly applied can possibly transmute a legal wrong into a legal right. . . . All that physical force, advocated by those who claim a legal right to exercise it, is able to do is to overcome the physical force of those who deny this legal right, and possibly to convince them of the practical futility or inexpediency of further attempting to urge the correctness of their own views of what are their legal rights."[5]

Despite the force of the above views, it would be futile to attribute to the states a full measure of sovereignty if British law were applicable in the states; if an enactment of Parliament were legally efficacious, and native courts, instituted by British authority, were empowered to enforce such acts, there is little doubt that the Indian states would be devoid of sovereignty in the Austinian sense. And here we come to the most effective argument for the full legal independence of the major states.

No enactment of the British Parliament or government of India is legally effective and enforceable in any of the Indian states. There are no courts in these states which will take cognizance of a parliamentary statute as legally binding in any controversy. The princes are absolute in their domestic affairs; they are the fountains from which all laws spring and flow; and native courts, if they exist at all, refer only to their enactments in deciding disputes. Furthermore, the decisions of the native tribunals are not appealable to any court of British origin. It is granted that many exigencies arise whereby the ruler is forced by the government of India to act in a specified manner; but such acquiescence is the result of a superior physical power coercing a weaker, and not a legal superior commanding a legal inferior. " . . . their laws are supreme in their own state, and there is no appeal from their courts even to the Privy Council. The writ of His Majesty does not run in the

[5] W. W. Willoughby, *Fundamental Concepts of Public Law*, p. 253.

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states, and the surrender of criminals is governed by separate agreement."[6]

The theory can also be advanced and maintained that the states have the legal power to withdraw from their present alliance with the Empire. At first glance, this is seemingly untenable; but upon a closer analysis any doubts are soon dispelled. Perhaps for practical purposes the states are not possessed of the actual physical power necessary for a successful termination of their treaty relations with the crown; but, legally, there is no force which could interfere with a prince renouncing all treaties with the British power, withdrawing to himself, and commencing to conduct his own foreign relations.

From the above opinions it can be maintained that the states are legally independent and are not possessed of the power to conduct foreign relations only because of treaty agreements by which they have delegated such powers to a central authority, the British crown. They are sovereign in the Austinian sense. "The general proposition may here be laid down, however, that the presence or absence of sovereignty in a given political entity depends upon whether or not that entity has such control over its own legal competence that it cannot against its own legal will be legally bound in any way whatsoever by the legal will of another political body. This is the one and final test of sovereignty."[7]

Granting, then, that internally, the Indian states are legally sovereign, bound only by treaty to a common central agency, and possessed of the legal right to terminate all ties with this endowed functionary, the Indian states have the right to impose certain conditions upon British India before consenting to federal union; and this is not a favor bestowed by the crown, but a right resting upon established legal fact.

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[6] Lord Chelmsford, *Speeches,* Vol. 11, pp. 150-151.

[7] W. W. Willoughby, *Fundamental Concepts of Public Law,* pp. 180-181.

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The Administration of Japan's Pacific Mandate. The territory under Japanese mandate comprises the former German colonial possessions in the Pacific Ocean lying north of the equator. This region is made up of three main groups of islands, the Marshall, the Mariana, and the Caroline, having a total estimated land area of approximately 800 square miles. Included in these groups are more than 1,400 islets, reefs, and atolls stretching across the Pacific from 130 longitude east to 175 longitude east, and from the equator to 22 latitude north. Lying west of Hawaii, east of the Philippines, and south of Japan, many of these islands are near the steamship lanes running from the Hawaiian Islands to Guam and to the Philippines.

A recent census shows that there are more than 60,000 inhabitants in the territory under Japanese mandate, about four-fifths being natives.[1] More than 12,000 Japanese have gone to the islands, as well as a few Europeans and Americans. The Japanese, for the most part, are engaged in agricultural or commercial pursuits or are government officials, while the Occidental population is made up mostly of missionaries. Racially, it is believed that the natives come within the Micronesian or Polynesian classification, although in many instances the racial strain is not pure.

Prior to 1914, the Japanese had few interests of importance in these islands. Occasional tramp steamers, trading vessels, or fishing boats from Japan sometimes visited them, but no regular trade relations existed. When, however, the World War broke out, Japan lost no time in sending a naval squadron to the islands, and, with comparative ease, she obtained control of them in October, 1914. At the time, the Tokio government explained that the seizure of the islands was only temporary, for military purposes, and that Japan had no desire to keep them.[2] Later events indicate, however, that these mere dots in the Pacific took on an increased value in Japanese eyes; certainly, once having secured control of them, the conqueror was loath to give them up.

Before the entrance of the United States into the war, Japan had

[1] *Official Report of the Japanese Government to the League of Nations for 1928*, p. 117.

[2] *New York Times*, October 8, 1914.

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already made attempts to conclude agreements with some of the Allied Powers which would guarantee to her certain territories at the time when a peace conference should be held. A series of communications with the governments of England, France, Italy, and Russia in the early part of 1917 secured the support of these powers for future Japanese claims, in return for certain minor concessions on the part of Japan. That Japan should seek territorial acquisitions in the Pacific area was but natural, and undoubtedly the idea of being rewarded for participation in the war by this means appealed strongly to the Japanese. In the writings of one who has been a spokesman for Japan in the western world in recent years, we find that he believed the reasons prompting the Japanese to seek annexation of the German islands in the north Pacific to have been based largely upon pride and economic considerations.[3] Japan wanted more colonies for the sake of the prestige accompanying such expansion. Furthermore, these islands would permit of some settlement and thereby give a few Japanese an opportunity to escape the crowded conditions in Japan proper. Another reason for an annexationist sentiment was that the possession of the islands was regarded as necessary for strategic purposes. Wartime utterances in the Japanese press showed that a certain section of public opinion believed that they would afford "a series of excellent naval bases," inasmuch as they "intercept the American line of communication with their naval bases," and would be of untold value to Japan "in the struggle for the mastery of the Pacific."[4] At the time of the peace conference, it undoubtedly was Japanese pride, together with the strategic importance of the islands, that caused Baron Makino to insist that Japan be given control over these former enemy possessions.

At Paris in 1919, Japan, along with the other powers, finally accepted President Wilson's proposal for a system of mandates under the jurisdiction of an agency of the League of Nations. It was at meetings of the Allied Supreme Council on May 6 and 7, 1919, that a decision was reached awarding the German possessions in the Pacific, north of the equator, to Japan. A misunderstanding between the United States and Japan grew out of these meetings, because President Wilson claimed to have asked that the island of Yap be excluded from the allotment to Japan, although the official minutes of the meetings con-

[3] K. K. Kawakami, *Japan and World Peace* (New York, 1919), pp. 63-71.

[4] For a more complete discussion, see G. H. Blakeslee, "Japan's New Island Possessions," *Journal of International Relations*, XII, pp. 173-191.

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tained no such request. The award included Yap, and when this fact was brought officially to its attention, the government of the United States protested vigorously. The Yap controversy was finally settled in a treaty between the two powers, signed at Washington on February 11, 1922, which disposed of differences between the two governments in regard not only to Yap but to the mandate as a whole.

In accordance with the provisions of Article 22 of the Covenant of the League of Nations, Japan's control over these islands as a mandatory power under the League forms a "sacred trust of civilization." The islands are a class "C" mandate, i.e., one of those, "which, owing to the sparseness of their population or their small size, or their remoteness from the centers of civilization, or their geographical contiguity to the territory of the mandatory, and other circumstances, can be best administered under the laws of the mandatory as integral portions of its territory." On December 17, 1920, the Council of the League approved the official award of the mandate to Japan. In this draft mandate are found certain limitations upon Japan's freedom of action. The mandatory must "promote to the utmost the material and moral well-being and the social progress of the inhabitants of the territory." Forced labor, except under certain conditions, and the slave trade are to be prohibited. Traffic in arms and ammunition must be controlled, as must be the sale of intoxicating liquors. "No military or naval bases shall be established or fortifications erected" in the mandated territories, and the "military training of the natives, otherwise than for the purpose of internal police and the local defense of the territory, shall be prohibited." Further, freedom of conscience and worship must be permitted, and missionaries must be allowed to carry on their work in the territory, provided public peace and morals are not disturbed thereby. Japan has agreed to "make to the Council of the League of Nations an annual report to the satisfaction of the Council, containing full information with regard to the territory, and indicating the measures taken to carry out the obligations assumed under" provisions of the mandate.

When Japan gained control of these former German possessions, late in 1914, military government was immediately established. On December 28, a reorganization of the government of the islands took place, and they were put under the control of a provisional naval garrison. Headquarters were established on the island of Truk, with six subordinate offices located at Saipan, Palau, Yap, Truk, Ponape, and

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Jaluit.[5] In July, 1918, a civil administrative department was established, although the commander of the naval garrison still remained in charge.[6] The only important change brought about at this time was the substitution of civilian officers for naval officers in the six branch offices. In March, 1922, an imperial decree created a South Seas Bureau, which is the organization now in charge of the administration of the islands. This bureau has its main office in Korror, one of the islands in the Caroline group; and the civil administrative stations which were established in 1918 have been replaced by branch bureaus in the same locations. The South Seas Bureau is divided into many different sections and sub-bureaus, each of which has its own particular functions.[7] According to recent figures, the personnel necessary to carry out the work of the administrative system members over 600; and very few of the positions are held by natives.

The director of the South Seas Bureau is the chief official of the Japanese government in the mandated territory. He is responsible for the administration of the islands to the prime minister of Japan, who supervises the work through the Overseas Affairs Department. In exercising certain functions, the director is subject also to orders from the minister of communications, the minister for finance, and the minister for commerce and agriculture. The director may issue administrative regulations in the islands; and these orders carry penal clauses impos-

[5] *Second Annual Report of Japanese Government to the League of Nations*, p. 1.

[6] *Ibid.*

[7] The arrangement is as follows:

Director's Secretariat

1. General Affairs Section
2. Financial Affairs Section
3. Police Affairs Section
4. Economic Development Affairs Section
5. Communications Affairs Section
6. Saipan Harbor Works Office

Affiliated Offices

1. Branch Bureaus
2. Primary Schools and their Branches
3. Public Schools
4. Apprentice-Woodworkers' Training School
5. Courts of Justice
   a. Higher Court
      Public Procurator's Office in Higher Court
   b. Lower Courts
      Public Procurator's Office in Lower Courts
6. Industrial Experiment Station
7. Mining Station
8. Hospitals and their Branches
9. Post Offices
10. Meteorological Observatory

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ing imprisonment for a period not exceeding one year or fines not exceeding 200 yen. In some cases of emergency, the director may issue orders with heavier penalties. But to remain effective such regulations require the approval of the prime minister.[8] Legally, the director has the power to issue certain orders. But in practice these are of minor importance, all matters of major importance being dealt with by imperial ordinances.[9] Although the terms of the "C" draft mandates provide that the territories in the "C" classification may be administered as portions of the territory of the mandatory, the Japanese government has usually applied special laws, apart from the general laws of Japan, in the mandated islands.[10]

Scattered through the islands are the six branch bureaus of the main office. These offices are concerned mostly with local administration, some of the functions falling within their jurisdiction being problems and duties in connection with the census, the police, the collection of taxes, and hygiene.[11] Each of the branch bureaus has a head who administers laws and regulations in the district under his jurisdiction. These heads come under the superintendence of the director of the main office at Korror. Under certain circumstances, or when local conditions justify such action, the branch bureau heads may issue orders which have the force of law. These orders may not, however, have penal clauses attached to them. Regulations promulgated by the bureau heads may be suspended by the director if found in conflict with laws and regulations already in force, or if they are contrary to public welfare, or if they go beyond the authority of the person issuing them.[12] In certain civil disputes between individuals, the heads of the branch bureaus may act as arbitrators, which gives them some judicial power in addition to their other functions.

Village governments have been created under each branch bureau, the head officers in such units being village chiefs; and the positions are usually filled by natives. These officers are appointed and dismissed by the head of the branch bureau for the district, with the sanction of the director of the South Seas Bureau. The village chiefs aid in the

[8] *Official Report of the Japanese Government to the League of Nations for 1927*, p. 10.

[9] *Ibid.*

[10] *Minutes of the Permanent Mandates Commission, Session 12*, p. 46.

[11] *Report for 1927*, p. 12.

[12] *Official Report of the Japanese Government to the League of Nations for 1925*, p. 26.

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execution of laws and regulations by disseminating knowledge of them among the natives. They are required to submit reports and opinions concerning the administration of their local units to the head of the branch bureau over them. On the whole, it has been found that the use of these native officers has been an asset in carrying on the administration of the islands. Their prestige in the local community makes the problem of law enforcement easier for Japanese officials.

With the withdrawal of the naval forces from the islands in 1922, it became necessary to organize an efficient police system. No uniform or detailed police regulations have been drawn up to be enforced in all of the islands, because the varying customs of the many different tribes made it seem best to deal with minor local disturbances as the situation demanded. Regulations to apply to major disturbances, and to the more important problems of law enforcement, have been promulgated, and apply uniformly in all of the islands. Native policemen aid in the work of the police force and have jurisdiction over Japanese and foreigners as well as over fellow natives.

Prior to 1922, the administrative officials representing the Japanese government also served as the judiciary; but with the creation of the South Seas Bureau, a higher court and three lower courts have been established. In accordance with regulations issued in January, 1923, the civil code, commercial code, criminal code, code of civil procedure, and code of criminal procedure of Japan have been applied *mutatis mutandis* in the islands.[13] Not all portions of the Japanese legal codes can be strictly applied, and the principal matters for which special provisions are enacted as exceptions to the legal codes of the Empire relate to certain civil cases in which natives alone are involved. In many such cases, it has been deemed best to take into consideration native practices and native customs. In criminal cases, however, the criminal code of Japan is applied regardless of the race or status of the persons concerned.

The lower courts operate on a single judge system, there being no jury trial in the islands, and give decisions on civil and criminal cases in the first instance. These courts are located at Palau, Saipan, and Ponape. The court of second instance, or the higher court, reviews cases on appeal from the judgments of the courts of first instance. The three judges constituting the bench in the higher court render final decisions. Judges appointed to this court are selected from among persons having

[13] *Report for 1923*, p. 23.

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qualifications to hold similar offices in Japan proper. Attached to each of the courts is a public procurator's office which "directs and superintends the detection of offenders, brings judicial proceedings before the courts, and directs and superintends the execution of judgments rendered."[14] Police inspectors and police sergeants aid the public procurators in carrying out their duties. Branch bureau heads, it will be remembered, have judicial functions in addition to their administrative work. In certain civil cases, they may hear statements of the litigants and may take evidence, pronouncing judgment without bringing up the case for a formal trial. These decisions are known as "summary judgments," and if the accused is dissatisfied with the decision he may apply for a formal trial before the courts of first instance. Branch bureau heads may also delegate a portion of their judicial authority to the village chiefs. The vesting of some judicial power in these officers is in accordance with native tradition, for in many villages it is still the custom to regard the chief as the highest governing authority.[15]

When the complex problems constantly arising in the attempt to apply a new system of government to a population of backward and primitive people are taken into consideration, it may be said that the number of legal cases arising in the islands is very small. Individuals may be punished only for violation of a definite legal provision. Penalties, of course, vary with the nature of the offense, but they may be a death sentence, penal servitude for life, penal servitude, imprisonment, detention, or fine. By far the most common offenses dealt with by the courts and administrative officials are in connection with gambling, larceny, battery, liquor violations, and violations of the fishing regulations.[16]

In connection with the public finances of the mandate, we find that the excess of the total revenue derived from the islands each year over the total expenditures made in the islands is greater than the subsidy which is granted to the South Seas Bureau annually by the Japanese government. The government of Japan continues to grant subsidies to the islands, although the amounts have been reduced from what they were in the early days of the bureau. Recently, the Permanent Mandates Commission has become interested in knowing what the Japanese government intends to do with the surplus occurring in the budget each

[14] *Report for 1927*, p. 3.
[15] *Minutes of the Permanent Mandates Commission, Session 5*, p. 12.
[16] *Report for 1927*, p. 22.

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year.[17] The accredited representative of the Japenese government has explained to the members of the commission that this surplus might be only a temporary thing and that, in the future, larger subsidies might have to be granted again. At the present time, the surplus is carried forward each year and placed in the revenue side of the budget for the following year. The Japanese authorities usually try to have the expenditures equal the revenue, but in recent years they have been conservative, both in estimating the revenue and in planning the expenditures. The Permanent Mandates Commission has taken the position that any surplus occurring in the administration of the islands should be used for the welfare of the natives, and the Japanese representative to the meetings of the Commission has agreed.

The total expenditures in the islands were over 6,000,000 yen in 1922, a sum that has not been equalled since that time. The average annual expenditure in the past few years has been almost 4,000,000 yen. The largest subsidy granted to the islands was in 1922, and amounted to 5,239,960 yen. Since 1924, the annual subsidy has been 1,800,000 yen. The total revenue from the islands each year has been increasing since 1923, the latest figures showing that the income derived from them is about 8,000,000 yen. The budget for the mandate must be approved by the Imperial Japanese Diet, even though the finances for the islands are separate from the budget of the Japanese government. By far the greatest sums are being spent for salaries of the many officials, office expenses, mining projects, communications, and industrial experiments. The main sources of revenue are the taxes of various kinds and the profits derived from the sale of phosphate. There are four different kinds of taxes—a poll tax, a mining tax, port clearance dues, and customs duties, the first two being direct taxes, while the last two affect the people indirectly. The order of tax income from the greatest to the smallest in amount is port clearance dues, revenue from the poll tax, customs, and, of very small consequence, the mining tax. These taxes are collected by the heads of the branch bureaus. Port clearance dues are levied on certain articles exported from the islands to Japan; while the poll tax is placed upon both natives and non-natives, with very few exceptions.

Japan has set about the economic and social development of her mandate with considerable vigor. The authorities have undertaken to develop the resources of the islands, not only by making use of the

[17] *Minutes of the Permanent Mandates Commission, Session 14*, p. 273.

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products found there heretofore, but by conducting investigations in order to determine what new commodities might be produced. An industrial experiment station has been established under the direction of the South Seas Bureau, and its investigations have given satisfactory results. For example, it has been found that forest woods suitable for planting in the islands are teak, Ceylon, cinnamon, ironwood, rosewood, and mahogany.[18] None of these woods has been of any commercial value in the islands in the past; but with scientific planting and care, valuable sources of supply for the future may be built up. Investigation has revealed also that coffee may be grown in certain of the archipelagoes, and since 1927 the Japanese government, through the South Seas Bureau, has been giving grants-in-aid to encourage planting it. In addition to itself conducting investigations for the purpose of learning what additional resources may be developed, the government has actively encouraged both Japanese and natives along these lines by the grant of subsidies. Considerable money has been spent to aid in the growing of sugar cane, cotton, tobacco, hemp, and palm trees.

Only about one-third of the land area of the mandate, or approximately 70,000 hectares, is regarded as being suitable for cultivation, and not all of this has as yet been put into use. Of agricultural products, sugar is by far the most important.[19] The industry is under private management, and is growing rapidly, due largely to the generous grants-in-aid given by the government. From the molasses of the sugar cane, considerable alcohol also is produced.

In the development of mineral resources, as in the encouragement of agriculture, the Germans had made a start; but real strides were not taken until the Japanese obtained control. The minerals found are sulphur, manganese, and phosphate, the latter being of much the greatest importance. The operation of the phosphate mines is a government enterprise, and a mining station has been established under the control of the South Seas Bureau to carry out this work. Since 1917, an annual average of about 60,000 tons of refined phosphate has been exported from the archipelagoes.[20]

Along with the development of the natural resources of the mandated territory has gone the establishment of regular steamship service

[18] *Report for 1925*, p. 60.
[19] *Report for 1927*, p. 82.
[20] *Ibid.*, p. 91.

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between the islands and Japan. This has been accomplished by granting subsidies to steamship companies. Improvement in communication facilities has been marked; several powerful wireless stations have been built, a telegraph service links certain of the islands, some highways have been built, and a postal system has been established.[21] There are no railways for general public use, although rail transportation is used for products from the phosphate mines. To aid in navigation, lighthouses have been erected, navigation buoys have been placed, and some of the harbors are being deepened and otherwise improved. In brief, the energy which has characterized other phases of the Japanese administration has found its way into the development of navigation and communication as well.

In June, 1922, the customs barrier which had previously existed between the islands and Japan was eliminated, and trade between the two was made free of duty except for port clearance dues which are charged on certain exports to Japan.[22] It must be remembered that, although Japan favored economic equality among all powers in dealing with the mandated regions, the "open door" does not exist in class "C" mandates, Great Britain and her Dominions having prevented its application in territories of that classification. Japan, therefore, has succeeded in monopolizing the trade of the islands awarded her, foreign countries having but very few and extremely irregular commercial relations with them. The chief imports are cloth goods, tinned foods, rice, cereals, metal ware, machinery, and alcoholic beverages; while the chief exports from the islands are phosphate, sugar, alcohol, copra, hemp, and shells. Down through 1920, the annual value of the imports exceeded the value of the exports, but since that date the situation has been the reverse. The value of imports has ranged from 938,456 yen in 1917 to a high of 4,301,827 yen in 1926; while the value of exports has varied from 597,898 yen in 1917 to a top figure of 7,860,000 yen in 1927.

No definite regulations regarding land ownership have been enacted, although titles in land acquired in accordance with the old German laws and with native custom have been recognized by the Japanese. Almost the only regulatory measures in regard to the land system which have been made by the administrative officials have been those to

[21] *Official Report of the Japanese Government to the League of Nations for 1926*, pp. 79-80.

[22] *Minutes of the Permanent Mandates Commission, Session 10*, p. 41.

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safeguard the rights of natives. The German authorities found that because of the ignorance of the natives, most of them had little conception of land ownership and might easily be cheated. Steps were taken, therefore, to safeguard the native landowners. The Japanese have followed this same policy, having prohibited private persons from "entering into agreements aimed at purchase or sale, transference or mortgage, of lands owned by natives."[23] Transactions between Japanese and natives, or foreigners and natives, in regard to land transfers are not valid unless approved by the administrative authorities. The Japanese government has taken the position that land purchased outright by the government at its own expense is the property of the government in its own name. Lands held by the government in its capacity as a mandatory power are those obtained in accordance with paragraph 2 of Article 257 of the Treaty of Versailles. Some of the lands taken over from the German government were sold to private individuals, and German nationals had an equal opportunity to buy these lands if they desired.[24] A classification of government land has been made which divides it into that which is for public use, that which is for government use, that which is for forestation, and that which is for miscellaneous purposes.

The question of slavery is one that the Japanese have escaped; for slavery and the slave traffic are non-existent in the mandate. The Japanese have been fortunate, too, in not having serious labor difficulties. There is no organized labor in the islands, though with the further development of the sugar and mining industries, the problem of regulating labor may present itself. The regulations in force at the present time appear to be adequate to govern labor conditions, for it has not been deemed necessary to apply in the islands any of the conventions adopted by the International Labor Organization in regard to labor and slavery in mandated territories. Although the terms of the "C" mandate give the mandatory power the right to enforce compulsory labor for improvement in public works, should such steps become necessary, there has been no instance in the Japanese mandate where that right was exercised. It is difficult to get a good supply of labor in the islands, for the natives are very shiftless and lazy. For that reason it is permissible to import laborers on contract, although strict supervision is kept over the employers who follow this practice. Individuals or busi-

[23] *Report for 1925*, p. 98.

[24] *Minutes of the Permanent Mandates Commission, Session 7*, p. 86.

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ness firms importing contract labor are required to submit a written report to government authorities, together with a copy of the terms of the contract. Administrative officials of the South Seas Bureau have the power to declare these contracts null and void, and also may fine employers if they do not observe the terms of the agreement.[25] Should employees violate the terms of the contract, the employer may bring the case before one of the courts of justice.

In the realm of public health and sanitation, the Japanese have been faced with a real problem; for the natives are ignorant of even the primary essentials for maintaining health. The Japanese administrative authorities have attacked the situation with their customary vigor, and at present the facilities for carrying on this work are more widespread and adequate than they were under German rule. A problem remains, however; for the coöperation necessary to educate the natives to a healthy state of living is lacking, because most of them are reluctant to assume any initiative in the matter. Natives are treated free of charge, or at very small expense, at the medical centers, in order to encourage their coming in for treatment. Doctors go into the outlying districts to bring relief to those who will not go to any of the several hospitals for attention. The most frequent ailments among natives and Japanese alike are pulmonary diseases, skin diseases, and venereal diseases, all of which are being combatted by the medical staff in the islands.

Even though the Japanese have done very good work in carrying out an ambitious public health program, there is still need for drastic measures of some kind to preserve the dwindling native population. In some of the islands, there is a steady decrease from year to year, the net result being that the latest population figures show that between October, 1925, when the last census was taken, and June, 1928, there has been a decrease of 253 natives.[26] During this same period, the Japanese portion of the population increased by 5,030, almost doubling in number.

To combat the liquor traffic, the Japanese as early as 1921 promulgated regulations designed to keep the natives from obtaining liquor other than for medicinal purposes and for religious ceremonies. Natives are not allowed to consume liquors containing more than three

[25] *Official Report of the Japanese Government to the League of Nations for 1924*, p. 46.

[26] *Report for 1928*, p. 117.

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per cent alcohol, and they are prohibited "from manufacturing, selling, or purchasing and possessing them." In spite of the regulations, the natives manage to obtain liquor, and it is interesting to note that among the legal cases in which convictions have been secured, forty per cent of the crimes committed have resulted from liquor consumption and the liquor traffic.[27] The liquor problem has not been accompanied by a traffic in drugs; but the natives have discovered that a drink called "sakawo," made from plants found in certain of the islands, creates results much the same as those obtained from smoking opium. The Germans tried to suppress the consumption of this drink, and the Japanese are continuing the effort.

The work that the Japanese have done in carrying out their educational program has repeatedly drawn favorable comments from members of the Permanent Mandates Commission. The Germans left educational matters largely to the missionaries. There still are missionary schools in the islands, but the Japanese have established a number of government schools as well, and as a result a larger number of children now have an opportunity to receive some schooling. Separate schools, known as primary schools, have been established for the Japanese children. The course in these schools is usually of six years' duration, and is followed by a higher course lasting two years. In June, 1928, there were seven of these schools, and more were being established.

More numerous are the public schools for native children, which have been established in important centers where they are easily available for a large number of pupils. The native children from outlying districts are brought into these schools, where they are boarded and lodged. Instruction is free, and is conducted in the Japanese language in all except the lowest grades, where the native tongue is used. Natives as well as Japanese teach in these schools. In 1928, there were over 2,000 native children attending the public schools, and new buildings were being erected with a view to caring for the increasing enrollment. A few of the natives attend mission schools, both Protestant and Catholic. In addition to the regular public schools, the government has established a woodworker's apprentice training school to give native boys some technical training. In what are known as "short term classes," the various branch bureaus give technical instruction to youths and adults alike in agriculture, forging, and woodwork.

In conclusion, it may be justifiable to attempt certain generalizations

[27] *Minutes of the Permanent Mandates Commission, Session 16*, p. 54.

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for the purpose of placing some evaluation upon the work that the Japanese have done in their mandated territory. It is difficult to get other than a general idea of what constitutes public opinion in Japan in regard to the areas under mandate. As far as the average Japanese is concerned, he is probably as interested in these regions as is the average citizen of the United States in Midway Island. The South Sea Islands are not rich enough or near enough to interest a large number of Japanese. At times of diplomatic stress, or when jingoistic publications proclaim a war in the offing, the press is active in discussing the area, the majority of the articles usually speaking of the islands, not as being a "sacred trust of civilization," but as "colonies" or "dependencies" of Japan. Whether the incorrect use of terms in such cases is intentional or due to ignorance is open to question.

In government circles, two points of view in regard to the island mandates are found. One is reflected in the statement of Viscount Uchida, foreign minister, who said to the Diet in the early part of 1921:[28] " . . . it is the determination of the Japanese government to spare no efforts in the discharge of this noble mission of civilization, in promoting the welfare and development of the people of these territories, thus fully to deserve the trust that the League members have placed in Japan." Another point of view is found among certain members of the House of Peers, who feel that Japan's share of the former enemy territories which were placed under mandate is "shamefully inadequate." This group feels that the attitude of the government toward the islands is entirely too reserved. If the islands could be administered as integral portions of the territory of Japan, why were they not incorporated into the Japanese Empire and governed accordingly?

As for the system of government that has been established, it undoubtedly is well-fitted to meet the requirements of the service for which it has been provided. In most respects it is similar to the systems in use in the colonies administered by Japan, and is consistent with the Japanese theories of colonial government. Chief responsibility is centered in the director of the South Seas Bureau, who in turn, of course, is responsible to the prime minister through the Overseas Affairs Department. Subordinate officials in the islands carry on the administration in the regions under their jurisdiction. The natives are not being forced to contribute too heavily to the support of the government in

[28] *Japan Chronicle,* February 3, 1921.

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the way of taxes or exactions of any kind. Since it is hoped that some day they will be able to govern themselves, it might be better if the Japanese would give them more opportunity to learn about the problems they must eventually meet. The number of Japanese officials in the administrative service seems to be out of proportion to the population of the islands; but perhaps a large personnel is required because of the wide geographical area covered by the territory.

There has been a fear in some quarters that the Japanese government has been blinded to all else in its desire to make the islands a paying proposition. If that be true, it is only partly so; for along with economic development have come social improvements of one kind or another. The work that the Japanese have done, in the fields of public health and education particularly, is admirable. The number of natives who now have opportunities to receive some education is greater than ever before, and facilities to make possible the education of still larger numbers are being provided each year. In the matter of public health and sanitation, the same general statement can be made. Native inhabitants of even the most remote islands are now being brought under the scrutiny of medical authorities. In these two fields, the Japanese administration has been of the highest order.

But in spite of the good work that has been done, the native population is decreasing. This may be only temporary; but thus far the efforts made to prevent a further decrease have been unsuccessful. It may be just another case of a primitive civilization giving away before the onslaught of a more vigorous culture. The Japanese are exploiting the islands with considerable energy, and will no doubt get from them everything possible. Pressure of population will make them use every bit of available land for cultivation, and will cause them to cultivate this land intensively. There will be no room for those who cannot keep up with the pace that comes from crowded quarters. And that the Japanese intend to make use of the islands to an even greater degree for the benefit of their own citizens is shown in a report recently made by the director of the South Seas Bureau. He stated that there is room for 50,000 Japanese farmers in the islands under mandate, and urged that they be encouraged to settle there.[29] There might be an even greater influx if the experiments conducted by the government in regard to the raising of rice result as successfully as indications have promised. Such an immigration of Japanese would mean that the popu-

[29] *Japan Chronicle*, May 3, 1926.

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lation of the islands would be almost doubled, with the natives in a distinct minority. Under present conditions, with the natives not quite four times as numerous as the Japanese, their numbers have begun to decrease. That conditions might easily be worse when the natives were outnumbered can be imagined without much difficulty.

When it is remembered that one of the primary essentials in the system of mandates is that the well-being of the native populations be safeguarded morally and materially, one questions the wisdom of "civilizing" these peoples. What good is accomplished if more natives live in frame dwellings than heretofore, and if more of them wear clothing than previously, if these "civilizing" influences result in their being driven from the territory they have inhabited for centuries? Or is it a natural and desirable sequence that a primitive and unproductive group give way to a vigorous people who are contributing something to present-day life?

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The Feetham Report: A New Plan for Shanghai. Shall the International Settlement of Shanghai be returned to China to become the prey of Chinese politics and civil disruption, or shall it be held in trust through a plan of Sino-foreign partnership until such time as China shall be able to preserve and protect its wealth and trade? This is the question now brought to the attention of Chinese and foreigners by the recently published report of Judge Richard Feetham, of South Africa, after eighteen months of intensive study of the problem. The report represents the most significant step yet taken toward solving the question of the future status of the International Settlement, the most important of all foreign concessions and settlements in China. For the first time in the history of the Settlement, China and the foreign powers have before them an adequate study of its development, and a definite plan upon which to base an agreement for future action.

The International Settlement is a foreign controlled and governed area on Chinese soil, located on the Whangpoo River and serving as the chief center for the vast trade and commerce of the Yangtze valley. Together with the French Settlement and the Chinese Municipality, it forms a part of the modern city of Shanghai. The International Settlement is an outgrowth of the British Settlement established in 1843 when Shanghai was first opened to foreign trade. Other foreigners

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were admitted to the original British area, and in 1863 the British and Americans pooled their interests after the French had set up a separate settlement of their own.[1] The amalgamated British and American Settlement, extended in 1899, became the International Settlement of today, containing some eight and three-fourths square miles of land on which reside over one million people.[2] In population, the Settlement is truly international. Although the Chinese comprise over ninety-five per cent of the total, more than forty different nationalities are to be found among the foreign residents. For seventy-three years, however, the Settlement was governed wholly by foreigners in spite of its overwhelming majority of Chinese residents, and it is only since 1928 that the Chinese have had any official voice in Settlement affairs.

The government of this unique municipality is based on the Land Regulations and By-laws which may be traced to the Regulations issued in 1845 by the British consul.[3] These were revised in 1854 to apply not only to the British, but to the French and Americans.[4] The present code was issued in 1869 after the withdrawal of the French, and has survived with few changes.[5] It is admittedly out of date, but the difficulty of obtaining an agreement among the many governments involved has prevented any real revision. The Settlement is governed by a Municipal Council, elected annually by rate-payers, who must possess high property qualifications. Endowed with complete charge of the administration of the municipality, the Council carries on its work through a number of departments and with the aid of advisory committees appointed from its members and from prominent foreign residents, which direct the application of the Council's policy. The administration is highly centralized; each department is under the control of an executive officer responsible to the Council through the Secretary-General, who coördinates the work of the government. Administrative officers are appointed for three years, and may be reappointed. In general, the administration has been characterized by an absence of corruption and by an efficient personnel.

From the point of view of good government, it would seem that the

[1] See Tyler Dennett, *Americans in Eastern Asia*, Chap. X; H. B. Morse, *International Relations of the Chinese Empire*, Vol. II, pp. 113-125; G. Lalling and S. Couling, *The History of Shanghai*, Chap. XXXVI.

[2] Of this number, about 30,000 are foreigners; the rest are Chinese.

[3] U. S. House Ex. Doc. 123, 33rd Cong., 1st Sess., 1853-54.

[4] U. S. Sen. Ex. Doc., 35th Cong., 2nd Sess., pp. 125-158.

[5] Shanghai Municipal Council, *Land Regulations and By-Laws* (Shanghai, 1927).

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foreign administration has been successful. The presence of a large body of Chinese residents, contributing their share of the municipal funds but having no voice in the government, has, however, proved a source of friction almost from the beginning of the Settlement's history. Had the foreigners excluded the Chinese from the Settlement as they apparently first intended to do, a great many of the problems now confronting the foreign and Chinese authorities would never have arisen. But the Settlement offered a place of safety during the many civil wars, beginning with the Taiping rebellion, and the continued presence of the Chinese offered astute foreign landlords an opportunity for profit. Hence the seeming paradox of a large group of Chinese residing on Chinese soil under foreign government. From the days of the Taipings to the present, foreigners have held the Settlement under their own control, and have kept it secure from any attempted aggression on the part of the Chinese. As recently as 1927, foreign warships anchored in the Whangpoo and foreign troops protected the lives of foreigners and Chinese alike and safeguarded millions of dollars' worth of Chinese and foreign property within the Settlement boundaries.[6]

Although foreign administration has been admittedly efficient in many respects, the Chinese residents of the Settlement have not been wholly satisfied, and, as would be expected, have demanded at various times a share in the government. Demands made in 1899, in 1906, and again in 1915 did not bring results until after the World War. In 1920, a Chinese consultative committee was formed to advise the Municipal Council on matters affecting Chinese residents. Generally the foreigners have resisted attempts of the Chinese to participate in the affairs of the municipality, and it was not until after the affair of May 30, 1925, that action was taken by the foreigners favorable to such participation. As a result of increasing agitation on this point, Chinese have been given seats on the Municipal Council, which is now composed of five Chinese, five British, two Japanese, and two Americans. In addition, six Chinese sit on the Council's advisory committees, and Chinese are gradually being admitted to senior positions on the municipal staff.

The problem does not end here, however, because Chinese demands now include rendition of the International Settlement, along with all other settlements and concessions under foreign control.[7] The foreign-

[6] See Shanghai Municipal Council, *Annual Reports*, 1926-1927.

[7] These demands were made at the Peace Conference of 1919, and have been voiced intermittently since then.

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ers object to such a step until China can guarantee adequate protection of life and property, and until they can be reasonably sure that Western standards of municipal administration will be maintained. Nevertheless, most foreigners concede that they cannot hope to maintain their control of the Settlement indefinitely, and that its future status is uncertain. As a result of a general discussion of the problem at the meeting of the Institute of Pacific Relations in 1929,[8] and because of an increasing desire to provide for the future by some definite action, the Municipal Council, in January, 1930, invited Judge Feetham, of the South African Supreme Court, to come to Shanghai to study the whole question.[9]

Judge Feetham was to advise the Council, "with a view to assisting them in formulating some constructive plan or scheme which, while giving full consideration to the aspirations of the Chinese people, will at the same time afford reasonably adequate protection to the great commercial and business interests which have developed in Shanghai."[10] His report, contained in three volumes, appeared in May and June of the present year, and includes an exhaustive treatment of all the many problems affecting Chinese and foreign relations in the Settlement, as well as an historical description of the Settlement's growth. In conclusion, Judge Feetham presents a plan upon which it may be possible to work out an agreement for the future status of the Settlement.

The keynote of this plan is the development of "a genuine system of international partnership in the common interests of China and of the different foreign nations represented in the Settlement,"[11] during the transition period which must intervene before rendition can become a fact. After reviewing the contentions of the Chinese for immediate rendition and the arguments of the foreigners against it, Feetham concludes that immediate rendition is neither practicable nor desirable for the best interests of both foreigners and Chinese. Political control of local Chinese authorities by the Kuomintang and the National Government and inexperience of the Chinese in Shanghai with local self-government are the principal reasons given for denial of immediate

[8] See Institute of Pacific Relations, *Proceedings of Third Conference* (Chicago, 1930), Report of Round Table Discussions.

[9] *Report of the Hon. Mr. Justice Feetham to the Shanghai Municipal Council* (Shanghai, 1931), Vol. I, p. 5.

[10] *Ibid.*, Vol. I, pp. 1-2.

[11] Feetham Report, Vol. II, p. 152.

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rendition. In addition, there is still the possibility of civil disruption, which might seriously threaten the security of life and property in the Settlement if foreign control were entirely eliminated. It is recognized that the Chinese demand immediate rendition, and therefore would be unlikely to agree to a prolongation of foreign control; but a new basis may be found for negotiation in Feetham's concept of the transition period as a time in which, "the Foreign Powers, will then, by their own admission, become merely temporary trustees for the Chinese people of the Settlement."[12] He believes that an international agreement can be negotiated which will better define the now indefinite status of the Settlement and provide for its eventual return to China. The length of this transitional period depends upon so many factors that no one can set a definite limit, although Feetham believes that, "if an opinion were to be ventured now as to the minimum period required, it would be a question of the number, not of years, but of decades."[13] This last statement has been objected to strongly by the Chinese, who see in it an attempt to extend foreign control indefinitely.

As to the administration of the Settlement during the transition period, the report makes a number of specific suggestions for desirable changes. The general form of the government should be retained, Feetham believes, because it has given this large heterogeneous community "self-government" and a "rule of law." He would provide for increasing Chinese participation in the government by enlarging the Council until it contained more Chinese than members of any other one nationality, but without destroying foreign control, and by permitting the gradual employment of Chinese in the higher administrative offices as fast as they could be properly trained. The enlarged Council would be more representative of the tax-paying community, and one demand of the Chinese, i.e., no taxation without representation, would be satisfied; for, as Feetham points out, such representation does not mean representation proportionate to taxation. Further, the Council under the transition régime would be responsible to two bodies of ratepayers, foreign and Chinese, which could bind the Council to any action in which they both concurred. Such concurrence might be required for the raising of tax rates. Separately, their actions would be only advisory. The powers and functions of the Council and the powers and duties of the electorate should be defined by a

[12] *Ibid.*, Vol. II, p. 134.
[13] *Ibid.*, p. 139.

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new "charter," which might be granted by the Chinese national government, but which should be based on an international agreement between China and the powers concerned.

Under this arrangement, the Council would be given the power to make by-laws (similar to city ordinances), subject to the veto of a new body composed of representatives of the Chinese government and the foreign Consular Body at Shanghai. The power formerly rested on the consent of the foreign ratepayers, which was very difficult to obtain. The creation of a new court is held to be necessary, consisting of one Chinese and two foreign judges, to which the Council would be responsible at law, and which should have the right of judicial review over provisions of the Land Regulations and By-laws. This court would take the place of the present Court of Consuls, to which the Council is now responsible, and which is really a committee of the Consular Body with few rules and ill-defined powers.

The possibility of the eventual amalgamation of the International Settlement with the French Settlement and the Chinese Municipality to form a "Greater Shanghai" is left open, but the desirability of closer coöperation between the authorities of these areas, especially in police and health matters, is strongly urged. Two plans are suggested as possible solutions for the extra-Settlement roads problem which has caused friction between foreign and Chinese officials for years. Both plans involve, "the adoption, for the present, of some form of joint administration, with a view at a later stage to the adoption of a more comprehensive scheme involving the creation of a new authority for the administration of these areas."[14]

In conclusion, Judge Feetham states: "The proposals which I have now made provide that, in addition to Chinese members on the Council, there shall be (1) a meeting representative of Chinese ratepayers which shall stand on the same footing as the meeting of foreign ratepayers; (2) Chinese representation in the authority entrusted with the duty of confirming by-laws made by the Council; and (3) Chinese representation in the Court to whose jurisdiction the Council is subject. Methods have been suggested also for broadening and strengthening the basis of partnership existing between the different foreign nations in respect to Settlement affairs. The developments proposed are thus in accordance with the principles of partnership already embodied in the constitution. If provisions on these lines are adopted,

[14] Feetham Report, Vol. III, p. 32.

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and are given a fair trial on the basis of willing coöperation by the partners concerned, it seems not unreasonable to hope that the Settlement system of government, which has a history in many ways remarkable, may be enabled to function successfully in the future in a more complete and consistent form, and while gradually adapting its methods and activities to meet the requirements of new conditions, may retain those distinctive features to which it has hitherto owed its special character and value.''[15]

The conclusions of the report and the principles stated by Judge Feetham seem to have been generally accepted by the foreigners in the Settlement. In fact, the Municipal Council had put into effect some of his recommendations before the final publication of the report.[16] Chinese opinion concerning the report seems to be divided. There is evidence that the Chinese are not satisfied, which was to be expected, since the report was made at the instigation of the foreigners; and the announcement that Dr. John C. H. Wu, recently appointed Chinese advisor to the Municipal Council, will devote the coming year to a similar study indicates a desire on their part to see the Chinese case in print. Nevertheless, the fact that the report of Judge Feetham contains definite and specific recommendations for the future, upon which the Chinese and foreign communities may be able to act, marks it as the most important step thus far taken toward a solution of the highly troublesome Shanghai question.

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[15] Feetham Report, Vol. II, p. 238.

[16] E.g., the adoption of measures to facilitate the entrance of more Chinese into the municipal service and the creation of a board of education with Chinese and foreign members to carry out a definite plan of Chinese education.

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NEWS AND NOTES

Personal and Miscellaneous

Compiled by the Managing Editor

Beginning with the issue for February, 1932, this Review will be published as a bimonthly. The subscription rate will remain unchanged. While it is not expected that the amount of matter printed in a year will, for some time at least, greatly exceed that contained in recent volumes, it is believed that somewhat better distribution can be secured. At all events, book reviews, bibliographical lists, and notes on current political developments will reach our readers while somewhat fresher than heretofore.

An extended announcement of the next annual meeting of the American Political Science Association appeared in the August issue of this Review (p. 718). It need not be repeated here, save to say that the place is Washington, D.C., the headquarters the Mayflower Hotel, and the date December 28-30. The complete program will be mailed to all members of the Association in the near future. Correspondence should be addressed to Professor John M. Gaus, chairman of the program committee, University of Wisconsin, Madison, Wisconsin.

Dr. Charles A. Beard will give a course of lectures on "Representative Government in a Technological Age" at the California Institute of Technology during the second term of the academic year. The course will be open to graduate students at the California Institute and from neighboring southern California institutions. Dr. Beard expects to be in Pasadena from the Christmas holidays until the Easter vacation.

Hon. Jacob Gould Schurman, formerly president of Cornell University and more recently United States ambassador to Germany, has been appointed special lecturer on international relations at the California Institute of Technology, and will give a short series of lectures in this general field during the coming winter.

Professor Harold S. Quigley, of the University of Minnesota, was appointed a delegate from the United States to the fourth biennial

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conference of the Institute of Pacific Relations scheduled to be held at Hangchow, China, October 21 to November 4. He was granted sabbatical leave for the fall quarter for this purpose, and planned to spend the time not devoted to the conference in traveling and investigating political conditions in China. He will return to the University to take up his work in the winter quarter, when his volume entitled *Japanese Government and Politics* will be published in the Century Political Science Series.

Professor W. W. Willoughby, of the Johns Hopkins University, attended the International Conference on the Limitation of the Manufacture of Narcotic Drugs held at Geneva, Switzerland, in May and June, and also the September meeting of the Assembly of the League of Nations as counselor of the Chinese delegations.

After a year spent at the Institute for Government Research, Washington, D. C., completing a monograph on the Bureau of Agricultural Economics, Professor Lloyd M. Short has returned to his academic work at the University of Missouri.

During the past summer, Professor Milton Conover, of Yale University, worked in Washington on a monograph for the Institute for Government Research dealing with the extension service of the Department of Agriculture.

Mr. William Beard, who collaborated with his father on *The American Leviathan,* has been appointed instructor in government at the California Institute of Technology for the current academic year.

Dr. Ernst B. Schulz, assistant professor of political science at Lehigh University, has been raised to the rank of associate professor. Dr. Schulz was visiting professor of political science at the Johns Hopkins University during the summer session of 1931.

On July 1, Dr. Rowland A. Egger, of Princeton University, assumed the post of director of the bureau of public administration at the University of Virginia. The bureau will work in coöperation with the state league of municipalities on problems of concern to the cities of the state.

Dr. Joseph R. Starr, who spent most of last year in England on a Social Science Research Council fellowship, studying the educational

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activities of political parties, has returned to the University of Minnesota as assistant professor of political science. He will give courses in the fields of comparative government and political parties.

Professor C. P. Patterson, of the University of Texas, has been granted a year's leave of absence for the purpose of studying the administration of justice in England. He represents the Civil Judicial Council of Texas.

Professor Frank M. Stewart has returned to the University of Texas after a year's leave of absence during which he gave courses at the University of California at Los Angeles.

Dr. Cortez E. M. Ewing, of the University of Oklahoma, has been granted a year's leave of absence in order to teach in the department of government at the University of Texas.

Dr. Stewart MacCorkle has resigned his instructorship at the University of Texas to accept an associate professorship in political science at Southwestern College, Memphis, Tennessee.

Dr. M. M. Chambers, formerly assistant professor of political science at the Oregon State College, and recently assistant in school administration at Ohio State University, has accepted an appointment as chairman of the department of social sciences in the Teachers' College of Kansas City, Missouri, for 1931-32.

Drs. Matthew C. Mitchell and Leland M. Goodrich have been promoted from assistant to associate professor of political science at Brown University.

Mr. H. H. James has been appointed to an instructorship in DePauw University to succeed Mr. William Hargrave, who has accepted a position in the college department of the Macmillan Company. The leave of absence of Mr. Hiram Stout has been extended another year, during which he will continue graduate study.

At New York University, Dr. Clyde Eagleton has been promoted to a full professorship of political science and Drs. H. V. Thornton and J. A. McCorkle from assistant to instructor. Mr. T. Donnelly has resigned to become chairman of the department of government at New Mexico State Teachers College.

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Professor Taylor Cole has resumed his work at Louisiana State University after a year's leave of absence. Professor Charles W. Pipkin, who is serving this year as a visiting professor at Columbia University, has been made a member of two committees of the President's Conference on Home-building and Home-ownership.

His many American friends were shocked to learn early this summer that Professor (formerly President) Maurice Vauthier, of the University of Brussels, had been run over and killed by a motor car. Professor Vauthier taught administrative law at the University of Brussels for many years and is the author of the very valuable *Précis du Droit Administratif de la Belgique,* published in 1928. He also was noted for his contributions in the field of æsthetics and was for some years president of the Belgian Royal Academy. He had long service, too, as secretary of the Commune of Brussels, which position, however, he resigned on becoming president of the University. For the past few years he had been a member of several successive Belgian cabinets as a representative of the Liberal party, first as minister of the interior and later as minister of sciences and arts. He was a man of charming personal traits, a brilliant conversationalist, a sagacious politician, and a sound scholar.

Professor Raymond Moley, of Columbia University, has been appointed research director of the statutory commission created in New York State for the investigation of the administration of justice. The commission will function for two years, and is expected to make a preliminary report to the legislature on March 1, 1932, and a final report on January 1, 1933. Among members of the commission are Dean Charles Burdick, of the Cornell Law School, and Mr. Bruce Smith, of the National Institute of Public Administration, New York City.

Mr. Paul F. Douglass, formerly Taft fellow in political science at the University of Cincinnati, who received the doctor's degree in June, has been appointed fellow in jurisprudence at the University of Berlin by the Institute of International Education for the academic year 1931-32. His dissertation, *The Administration of Justice in Magistrates' Courts in Hamilton County, Ohio,* is to be published this fall by the Johns Hopkins Press as one of a series of studies of judicial administration in Ohio growing out of studies being carried on by the Institute of Law of the Johns Hopkins University, in coöperation with the Judicial Council of Ohio and the Ohio State Bar Association. A

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grant of funds by the Institute of Law made it possible to expand the study to include a survey of all the forty-nine courts of limited jurisdiction in the second most populous county in the state. Mr. Douglass organized the study of the civil branch of the Cincinnati Municipal Court, and has completed a study of the mayors' courts of twenty-two municipalities adjacent to Cincinnati. The results of the latter study will be published by the Johns Hopkins Press under the title of *The Administration of Justice in Mayors' Courts.*

Among matters discussed by Governor LaFollette in his first message to the Wisconsin legislature (January 15) was the problem of executive-legislative relations in the preparation of legislation and the control of administrative agencies given extensive legislative power, and the securing of the advice and experience of leaders of various interests (industrial, agricultural, professional, etc.) in the state in the preparation of important legislation and the study of state policy. His recommendation of a council containing representatives of the legislature and of the various interest groups eventuated in an act creating an executive council consisting of five senators and five assemblymen, chosen by their respective houses, and ten additional non-legislative members appointed by the governor without confirmation. The new council has recently begun work, and Professor John M. Gaus, of the University of Wisconsin, has been made research secretary on a part-time basis.

During the last week of September, it was announced that the fourth annual conference of the Institute of Pacific Relations, which was to have met at Hangchow, China, on October 21, had been postponed indefinitely on account of the Sino-Japanese crisis. Subsequently, however, it proved feasible to proceed with the meeting, with both Chinese and Japanese delegates present; and near the end of October, the sessions were opened, though at Shanghai rather than Hangchow.

The eighteenth annual conference of the International City Managers' Association was held at Louisville, Kentucky, October 7-10. Principal sessions were devoted to management technique, the relations of the economic depression to municipal affairs, city manager policies, and training for city managership. Among speakers on the program were Mr. Louis Brownlow, director of the Public Administration Clearing House, Chicago; Dr. Lent B. Upson, director of the Detroit Bureau of Governmental Research; Mr. C. A. Dykstra, city manager

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of Cincinnati; Dr. Luther Gulick, director of the National Institute of Public Administration, New York City; and Professors Charles E. Merriam, University of Chicago, Thomas H. Reed, University of Michigan, and A. R. Hatton, Northwestern University.

During the current year, numerous members of the staff of the Institute for Government Research, Washington, D.C., have been engaged upon special studies or work for outside organizations. Mr. Lawrence F. Schmeckebier spent a considerable period on the study of the cost of criminal justice carried on under the auspices of the Wickersham Commission. Mr. Lewis Meriam completed work with President Hoover's Committee on Unemployment, and later was engaged on a number of special investigations having to do with the general problem of Indian administration. Messrs. H. P. Seidemann and Taylor G. Addison have been installing a budgeting and accounting system for the state of New Hampshire, under terms of a budgeting and accounting law prepared by the Institute and passed by the New Hampshire legislature last spring. Since June 1, Messrs. A. C. Millspaugh, F. W. Powell, Herbert Wilson, and Paul V. Betters have been conducting field work for an administrative and taxation survey of Mississippi initiated at the request of the Research Commission of that state. Dr. F. F. Blachly and Mrs. Miriam E. Oatman-Blachly have been in France making a final revision of their book dealing with the government and administration of that country.

In pursuance of its enlarged publication program, the Department of State will issue in November or soon thereafter the first two volumes of *Treaties and Other International Acts of the United States of America.* Volume I will contain introductory material, lists, and tables; Volume II will cover the period from 1776 to 1818 and contain copies of the first forty treaties to which the United States was a party. Later volumes will deal with the diplomatic and juridical history of the treaties. The Foreign Relations Series and the War Supplement Series will be carried further by the publication of the first volume of the War Supplement for 1917 and the first of three 1918 volumes relating to Russia. Two more volumes of the 1917 War Supplement and the second Russian volume are due to come off the press during the spring.

During the first year of its existence, the Bureau of Public Administration at the University of California has utilized a total staff of twenty-one persons in conducting its research program. Those occupy-

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ing permanent positions of professorial rank at the University, but having a major part of their activities in the bureau, include Dr. Herman M. Adler (formerly director of the Institute of Juvenile Research at Chicago and Illinois state criminologist), professor of psychiatry; Austin F. Macdonald (formerly at the University of Pennsylvania), professor of political science; Samuel C. May, professor of political science and director of the bureau; and August Vollmer (formerly professor of police administration at the University of Chicago), professor of police administration. Visiting members from other universities during the year included Professors Hugh N. Fuller, of Emory University, and Raymond Moley, of Columbia University. Other staff members included Dr. Carleton R. Ball, principal agronomist in charge, U. S. Department of Agriculture, Washington, D. C.; Mr. Fred Telford, director of the Bureau of Public Personnel Administration; and Mr. E. O. Heinrich, well-known criminal investigator. This group was aided by five full-time research assistants, five librarians, and two clerical assistants; and in addition, more than forty graduate students were working in the field. Thus far, the research program has dealt with (1) guides to the literature of public administration; (2) administration of criminal justice in California; (3) state, federal, and local administrative relationships; (4) interrelationships of the communities comprising the San Francisco Bay region; (5) legislative drafting; and (6) public personnel administration.

The fifteenth meeting of the Northern Association of Jurists *(nordiska juristmötet)* was held in Stockholm August 27-29. These meetings are attended by practicing lawyers, judges, professors of law, and others interested in jurisprudence from the five northern countries, namely, Sweden, Norway, Denmark, Finland, and Iceland. The association dates back to 1872, in which year the first meeting was held in Copenhagen. Since then the organization has convened in the three Scandinavian capitals, and in 1925 it met in Helsingfors. These sessions are of interest not only to the legal profession but to legislators and persons interested in legal reforms. The meetings are devoted to a discussion of legal problems with a view to arriving at solutions of the difficulties involved and to fostering uniformity in the content and procedure of the law in the respective countries. The suggestions of the association are frequently vitalized by the respective national parliaments, and when necessary may also find expression in treaties. National associations of jurists are maintained in each of the five states,

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and these in turn send delegations to the *nordiska juristmötet*. Among the fourteen hundred persons who attended the recent Stockholm meeting were numerous representatives from all of the local associations with the exception of Iceland. The first day of the session was devoted to a discussion of methods of examining witnesses, especially parties litigant in suits. Speakers from the various jurisdictions represented in the meeting uniformly stressed the need of encouraging those methods of examination by which the facts in the case would be brought to light. The second day was given over to sectional meetings in which such subjects were considered as the protection of minority stockholders in corporations, the legal phases of the boycott, and legal actions against the state and commune. The plenary session was resumed on the third day and was devoted to a discussion of the legal responsibility of the state and municipal corporations for the acts of their employees. All of these questions are of interest to the student of American public law, and it is significant that all of the speakers at the northern meeting were rather skeptical of rigid rules and evidenced a preference for the functional method of approach. It is perhaps also significant that while the American jurist plants himself firmly on *stare decisis* and the Scandinavian jurist fortifies himself with historical and comparative jurisprudence, both are facing similar problems and both are resorting to a sort of rule-of-thumb method in their quest for legal rules to govern present day social and economic situations.—WALTER THOMPSON.

A conference on University Training for the National Service was held at the University of Minnesota on July 14 to 17, inclusive, under the auspices of the University and the United States Civil Service Commission, and with the support of other agencies and departments of the national government, the Committee on Public Administration of the Social Science Research Council, and the Sub-Committee on Personnel of the Committee on Policy of the American Political Science Association. Among the topics taken up for discussion were the following: (1) the career aspects of the national civil service for college and university graduates; (2) student and faculty attitudes toward the public service; (3) the functions of the universities as centers for training for the public service, and resulting problems of curricula; (4) the courses now offered by colleges and universities as training preparatory to entrance into the national services; (5) existing methods of informing qualified students regarding vacancies in the national service; (6) the form and content of the specifications promulgated by the na-

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tional government relative to the training required for various positions; (7) types of examinations now given by the United States government for entrance into the service; (8) salary ranges, opportunities for promotion, and other conditions affecting the career aspects of the national service; and (9) possibilities for pursuit of graduate work within government departments. While some attention was paid to the entire range of employment in the national service, and to the personnel training problem of the government as a whole, separate sessions were devoted to only the following: professional and scientific services in agriculture and forestry; scientific services in general, with special emphasis on chemistry and physics; engineering services; legal services; consular and diplomatic services; public welfare and social services; and economic and statistical services. In each case at least two points of view were presented: that of the government, as represented by the Civil Service Commission, the Personnel Reclassification Board, and scientists in the several departments, and that of the universities which offer training, as represented by deans, department heads, and professors who came from various institutions. The excellent attendance, both of officials from Washington and of faculty members of universities, offered a splendid opportunity for the exchange of ideas and viewpoints. In many of the discussions, a third point of view was also presented, namely, that of the interested and intelligent outsider, who had neither a government nor a university connection. Despite the hot weather which prevailed throughout the conference, attendance and interest in the discussions were maintained from beginning to end. This result can be attributed to various causes, including the following: (1) the limited scope of the conference, which prevented the discussion from ever wandering far afield; (2) the diverse points of view represented, and the fact that nearly every one present could speak with recognized authority in his field; (3) the large amount of careful preparatory work which had been done both in Washington and at the University in compiling authoritative information for the conference—some of it ready in the form of large charts, and still more in mimeographed form, when the conference began; (4) a true conference atmosphere, since no attempt was made to obtain a large attendance, the speakers and invited guests were carefully selected, and practically everything took place around one large table. The conference undoubtedly proved that government officials, university specialists, and private citizens with intelligence and experience can frankly discuss common problems on a high plane. It also demonstrated the high import-

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ance of the study of public administration. Almost every speaker made some reference to this point, and those university teachers of public administration who were present made some most illuminating contributions to the discussions. At the last session, brief reports were presented by the specialists representing the various fields with respect to the training which they would recommend for men seeking government positions in those fields. These important and interesting reports cannot be summarized here. They will be found in the proceedings of the conference which are now being prepared for publication by the University. When published, the volume of proceedings will probably include all the papers presented, the most valuable parts of the discussion, the statistical materials compiled for the use of the delegates, and the final reports and recommendations mentioned above.—WILLIAM ANDERSON.

Progress Report of the Committee on Policy. The second meeting of the Committee on Policy was held at Charlottesville, Virginia, on June 28, with the following members present: William Anderson, Edward S. Corwin, E. W. Crecraft, H. W. Dodds, Isidor Loeb, W. B. Munro, Frederic A. Ogg, Thomas H. Reed, Benjamin F. Shambaugh, and Harvey Walker. The meeting was largely devoted to the consideration of reports of the various sub-committees, all of which were represented except the sub-committee on research.

The Sub-Committee on Publications reported the results of its questionnaire to the membership of the Association on the questions: Is there a real need for (1) a political science monograph series, (2) a political science classics series, and (3) a political science documents series? A large majority of the members replying answered all three questions in the affirmative, and the Sub-Committee recommended that the Executive Council of the Association appoint a committee of three members of the Association to be known as the Committee on the Publication of Monographs; that this committee be authorized on behalf of the Association to approve highly significant political science monographs and arrange for their publication by a commercial press or university press; and that efforts be made to raise funds amounting to $2,500 a year for an experimental period of five years to be used as subsidies where necessary to secure publication of approved monographs. In the discussion which followed, it appeared that the Sub-Committee was not disposed to press this recommendation, and a number of those present who had voted "yes" on the original questionnaire

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reported that, after reading the reasons given by those replying in the negative, they would now vote "no." The result of the discussion was that the recommendation was referred back to the Sub-Committee.

The Sub-Committee on Publications also recommended that, beginning with the year 1932, the AMERICAN POLITICAL SCIENCE REVIEW be issued bimonthly instead of quarterly, and that for assistance the editor be allowed $600 out of the funds of the Committee on Policy. This recommendation was duly adopted by the Committee and also approved by the Council at its meeting the next day.

There followed a discussion of the desirability of a full-time editor-secretary for the Association, and it was the sense of the Committee that it would be desirable to have such an office provided support of a permanent character could be secured for it. The Committee also discussed the question of a journal of public administration, for the establishment of which overtures have been made from several quarters. The Committee felt that the REVIEW, on its present lines, does not, and perhaps cannot, adequately meet the needs of this field. It was suggested that there was a possibility that those interested in public administration would split off from the Association and form an association of their own. A variety of opinions were offered as to means of meeting this situation, and the whole question of a journal of public administration was referred by unanimous consent to the Sub-Committee on Publications.

The report of the Sub-Committee on Personnel indicated that its members are somewhat dubious about the value of the placement service at present being conducted and expressed the opinion that it probably should not be continued unless a full-time secretariat can in some way be arranged for. The Sub-Committee is carrying on a survey of positions in the field of political science; also a similar survey of opportunities in the field of governmental research, with the coöperation of a committee of the American Psychological Association. The Sub-Com-committee is further preparing a list of fellowships and other types of financial assistance available for candidates for advanced degrees. Perhaps the most important work of the Sub-Committee is its plan for a comprehensive nation-wide survey of training for the public service. An analysis of courses in various institutions is in progress, and an effort is being made to ascertain student attitudes toward public service. It is hoped that the plan for the entire study will be ready in a few months for presentation to the Social Science Research Council and other interested organizations.

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One of the most important actions taken at this meeting was the adoption of the following recommendations: (1) that we encourage the formation of state or regional political science associations (whether they are to be the one or the other depending upon local circumstances); or where, as in Michigan, there exists a History and Political Science Section of the State Academy of Science, Arts, and Letters, that we take advantage of the existing organization even though it is not strictly a political science association; (2) that we invite the president or a representative of each of these associations to meet at the Christmas meeting with the Council and the Committee on Policy with a view to promoting a unified program of activities; (3) that we particularly emphasize with the regional associations their importance as a means of reaching the rank and file of the teaching profession, especially with reference to training for citizenship; and (4) that we offer to the membership of state and regional associations an associate membership in the American Political Science Association at four dollars (in addition to their membership in their own associations), that is, at enough to pay for the cost of sending them the REVIEW. These associate members will not, of course, have the right to vote at meetings of the Association. In addition, it was voted that the general chairman of the Committee on Policy be given authority to allow the expenses of speakers at meetings of regional political science associations out of any unappropriated balances in the funds of the Committee.

The Sub-Committee on Political Education reported that at least four of the small informal conferences in which politicians as well as political scientists and other experts are to take part have been arranged for this fall, and that a number of others are in process of arrangement for next year. It was the opinion of the Committee that this work is of very great importance, and it was strongly urged that the local committees helping to arrange these conferences be encouraged with as liberal allowances from the funds of the Committee as possible. The Sub-Committee also reported upon its efforts to overcome the inadequate recognition of political science in the curricula of normal schools, teachers colleges, and the courses of study in the secondary and elementary schools. The Sub-Committee is making strong efforts to establish contacts with the agencies responsible for fixing the qualifications of teachers and the courses of study for the schools. A series of state conferences between educationists and political scientists has been arranged for this fall, and a strong program is being prepared for a three-day round table on training for citizenship at the annual meet-

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ing of the Association. It was the Committee's opinion that it is not necessary for the Association to seek funds for an elaborate study of the place of government among the social sciences in the schools. A great deal of work has been done in the past, and is now being done by a commission of the American Historical Association amply provided with funds for the purpose. The function of the Political Science Association apparently will be to encourage the recognition of the facts, and in coöperation with the state and regional associations it is hoped that some genuine progress can be made toward effective citizenship training in which the study of government will have its rightful place.—THOMAS H. REED, *Chairman.*

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BOOK REVIEWS AND NOTICES

EDITED BY A. C. HANFORD
Harvard University

Die Idee der Staatsräson in der Neueren Geschichte. By FRIEDRICH MEINECKE. (München und Berlin: Druck und Verlag von R. Oldenbourg. 1925. Pp. 546.)

This book is without doubt one of the most important recent contributions to the history of political ideas. It is at the same time highly suggestive for political theory as such. Friedrich Meinecke is unrivalled in his ability to unravel the complexly interwoven transfiguration of a general idea. The eternal object which such an idea represents becomes intelligible through his masterful exposition of the kaleidoscopic multiplicity of individual formulations which its various aspects have found. His powerful historical imagination renders his study of ideas unusually vivid, for he brings to them the sure touch of the historical scholar who is fully aware of the atmosphere or climate of each successive age. Whether or not you agree with the particular positions taken by the author, you will always come away with a richer and more subtle point of view. All this could be, and has often been, said regarding his epochal *Weltbürgertum und Nationalstaat.* It is equally true of this more recent study. And in view of the fundamental importance for political science of the notion of a "reason of state" or, more broadly put, of a specifically political type of rationality, you will find yourself reading the various chapters over and over again in an effort to realize all the implications. In this review we wish to concentrate upon a critical evaluation of Meinecke's interpretation of this eternal object of political speculation.

The peculiar excellences of Professor Meinecke's work have tended to prevent a critical evaluation of its fundamental tenets. Its psychological subtlety, its weighing of antithetical and contradictory opinions, and particularly the refusal to define, or at least to circumscribe, the central concept at the outset intensify the difficulties of the critic. Yet this task must and will be undertaken along the same general lines which Carl Schmitt so ably anticipated some time ago.

The reason of state *(ratio status, raison d'état, ragion di stato, staats raison)* was one of the outstanding catch-words of the later six-

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teenth and early seventeenth centuries. Under the impact of Machiavelli's passionately detached analysis of the conditions of political action, speculation everywhere in Europe turned upon this fundamental problem of the relation of politics to the other realms of human endeavor. The idea of such a separate reason of state is at bottom neither more nor less than the assertion of the state, or organized political community, as the highest of all values.

That certainly was the view of Machiavelli. His thought is, however, complicated by the concept of a *virtù* which, according to Meinecke, is in turn in Machiavelli's opinion the self-evident purpose of the state (p. 43). This heathen concept of *virtù* deserves for this discussion to be made more specific by a few quotations, particularly since it is practically unknown in English (Cf. R. N. Carew in *Hibbert Journal,* October, 1928). "It is an exceedingly rich concept, . . . with a peculiar and individual note. It might include moral qualities, but primarily it is to designate something dynamical, something put by nature into man, heroism and the strength to accomplish great political and military deeds, but particularly to found and maintain flourishing states" (pp. 39-40). "It suggests the emotional and spiritual strength of natural man who through *grandezza dell 'animo* and *fortezza del corpore* grows to be a hero. This *virtù* is either genuine, in which case it produces that rare specimen we call a statesman, or it is derived, and then it produces good citizens. But *virtù* is by no means unregulated force of nature, it is force transformed into rational and purposive conduct, *virtù ordinata.* Associated with this concept of *virtù* are the concepts of *fortuna* and of *necessità.* It is the task of *virtù* to limit the influence of *fortuna.* In this struggle it is permissible to seize upon any promising weapons" (p. 46). "*Necessità* represents another aspect of the set of forces which we should today call the realm of causal determinations. If *virtù* is the living strength of man which creates commonwealths and gives them life and meaning, *necessità* is the causal, coercive force, the means to shape the inert mass into the form desired by *virtù*" (p. 47). This doctrine of *virtù ordinata* undertakes to rationalize the passion of some great men to create a community in their own image by the one grand simplification that this is the most important creative effort. Like the ancients, Machiavelli asserts that upon its success depend all other creative efforts as their *conditio sine qua non.* He thus eliminates all possibilities of the conflict of values.

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But this doctrine of *virtù* was not understood by his later admirers and detractors. It was a child of the Renaissance, and it appeared with it (p. 56). The calculating technical attitude toward political problems which this doctrine implies is all that remains under the misleading slogan of "Machiavellism." Of it the idea of the reason of state is the central tenet. Meinecke sets himself the task of discussing the spiritual struggle over this "Machiavellism" in terms of the idea of the reason of state (p. 57), rather than venturing upon a critical study of the literary controversies over Machiavelli *in extenso* (p. 61)—a job which has been done before him by Christ, Mohl, Villari, and Burd.

We have to look now for Meinecke's opinion as to what is to be understood by this concept. Although he tells us that "the rich content of the idea of reason of state cannot be enclosed within the narrow limits of a definition" (p. 251), he often indicates what he wishes to have us understand by reason of state. It is the principle of political action, the law of motion of the state. It tells the statesman what he must do in order to maintain and strengthen the commonwealth, because the state is an organic formation whose full strength is maintained only if it can somehow continue to grow. Reason of state indicates the ways and means of this growth. These formulations as a starting point are a bit vague. Surely if reason of state includes everything that the statesman must do under any circumstances, it lacks all specific significance. If, on the other hand, it embraces certain general rules, as the first sentence suggests—when Meinecke speaks of the law of motion of the state—it would perhaps be better to speak of rules which "usually" work, for the notion that unalterable laws rule throughout the universe is now commonly doubted. In other words, in this latter meaning, reason of state is simply the particular illusion applied to the facts of politics corresponding to similar notions applied to other facts—all presupposing an order of nature as a matter of course.

By operating with a vague concept, Meinecke is enabled to bring a vast network of heterogeneous ideas into the discussion, but this discussion for the same reason lacks structural clarity. Its effervescent wealth of interrelated ideas receives its order from the sequence of authors whom the discussion takes up in turn. This means that the book as a whole tends to become a series of essays on these individual authors, held together rather loosely, not by any definite *idea* of the

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reason of state, but rather by the *word*. The various chapters deal particularly with Machiavelli, Gentillet, Bodin, Botero, Boccalini, Campanella, Naude, Grotius, Hobbes, Spinoza, Pufendorf, Courtilz de Sandras, Rousset, Frederick the Great, Hegel, Fichte, Ranke, and Treitschke. There is also a chapter each on the spread of the doctrine of reason of state in Italy and Germany in the seventeenth century, and on the doctrine of state interest in France in the time of Richelieu.

In the opinion of the reviewer, this selection is not entirely immune from criticism. For example, it is not apparent why so shallow a writer as Gentillet should have been selected as the only Calvinist. The reason for Meinecke's choice must probably be looked for in a distinction which he attempts to draw between the history of ideas and the history of political theories. "To write the history of the idea of the reason of state means to investigate how reason of state has been grasped and explained by human thought during the passage of time. Formerly, one accorded this task to the history of political theories. The latter is usually treated as a sequence of dogmas, loosely connected with general history. Such shallow treatment cannot satisfy us today. The history of ideas should be treated as an essential part of general history . . ." (p. 25). Nobody will quarrel with these propositions. It is certainly true that "only by being grasped in the form of a principle do the tendencies of an historical epoch acquire their full impetus and rise to what one may call an idea" (p. 49). But the crucial problem remains: Which formulations of such a general idea shall we select from among the many available ones? Shall we emphasize those which contemporaries read most widely, or those which fit into a pattern of truth that we are willing to defend on general grounds regarding both their adequacy and consistency? Yet, Meinecke's critical attitude toward what he calls the history of political theories arises from a notable shortcoming of a great deal of political theory, so-called. This difficulty is rooted in the constant confusion of political and juristic concepts, a confusion which is bred by the desire of political pamphleteers to obscure the essential logical distinction between categories of existence and categories of essence, between what is and what ought to be.

The absence of a clearly defined concept of the reason of state does not mean that Meinecke's discussions lack all inner direction. As a matter of fact, Meinecke even speaks of a progress and development in the doctrine. The early doctrine was abstract, rationalistic, generalizing, and mechanistic. It presupposed that human nature was more or

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less alike in all times and places. The newer doctrine considers the individuality of each state. For Meinecke, the turning point is to be found in the philosophy of the German idealists, particularly Hegel (p. 434 and elsewhere). They expounded, as everybody knows, the identity of nature and reason, of politics and ethics. In order to be able to assert that the existing state is the reasonable (i.e., good) state, Hegel was obliged to deprive reason of its static character, to rob its objects of their eternal validity. Meinecke rightly emphasizes the dominating influence which this variety of anthropocentric monism had in Germany during the nineteenth century. The effect of this doctrine was to palliate *Machtpolitik* by "idealizing" it (p. 533). Thus, idealism became the entering wedge for a coarsely naturalistic and biological *Gewaltethik*. Meinecke minces no words in pointing out that such "idealism" is little better than the Western European "moralism" whose high-flown principles end in lamentations, hypocrisy, or cant.

Meinecke wishes to break them both. After rejecting the notions developed by German idealism, he propounds a new dualism which reminds one in several respects of American humanism. The doctrine of a distinct political morality he proclaims erroneous. We are here confronted with what is simply a specific instance of a much more general phenomenon, the conflict of individual and universal morality (p. 533). "For every human being, the general, pure, and severe ideal is confronted in each of his actions with his completely individual world which is compounded of natural and spiritual elements. All kinds of conflicts result. . . . The maintenance of his own individuality is certainly a moral right and a moral obligation, whenever it serves to maintain the moral element of this individuality. But if this self-assertion takes place at the expense of the universal moral command, it involves tragic guilt" (p. 534). Applying these general considerations to the political realm, Meinecke insists that the moral code does not lose its validity by coming into conflict with the necessities of political survival, and that he who makes himself the instrument of these necessities must nevertheless accept the odium which attaches to the man who violates the moral code. Unfortunately, the moral code is itself a rather problematical concept. We may readily agree with Meinecke that the moral code, in order to be a moral code, must be considered valid. But the really perplexing question at this point is: "Who decides what is right under certain circumstances?" In other words, the conflict between individual and universal morality, between more or less universal claims of validity, is itself only a limited aspect of the problem

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of the conflicts of moral and other values, and the concomitant one of the basis of their respective claims to validity. It may be doubted whether we should be satisfied in our efforts to clarify the conflict of fundamental values by taking flight into the æsthetic realm. The word tragedy is at best an expression of the fact that the moral code is itself problematical. It simply indicates the profound shock which the human being suffers when he discovers that conflicts of value do exist, and do require discussion. The fundamental problem of politics is how to organize the community for the purpose of making such final decisions. The idea of the reason of state represents one possible answer. This answer involves necessarily the assertion of a highest value. The highest value it asserts to be the life of the political community to which we belong. If we do not accept this decision, if we wish to assert another highest value, we cannot escape from rejecting the state and the idea of its *ratio*.

Meinecke suggests that the doctrine of *raison d'état* is fundamental for political science (p. 510). In its quest for the concrete "state" it should take account of this "idea." But why limit ourselves to the "state"? Does not the same problem arise wherever the conflict of values takes concrete form? How about the kind of situation epitomized by Dostoyewski in the famous episode of the great inquisitor in the Brothers Karamazov? How about the man who commits a fraud in order to save the business which he knows thousands to depend upon? It seems to the reviewer that the analysis of the real problem of which the historical discussions about the reason of state are only a specific manifestation requires much more exact and searching theoretical analysis before the "idea" can be more than a crude measure of the "political" element in men's behavior. The idea of a specific reason of state may be, and in the opinion of the reviewer it is, the starting point for a fundamental category of political science; but it is no more.

It would be difficult to undertake a detailed evaluation of the wealth of material presented in the book. Several chapters, particularly the first devoted to Machiavelli, deserve a review of their own. The abundance of historical insight and the survey of four centuries of political thought will excite the highest admiration. They will induce anyone who is interested in the history of political ideas to reconsider many of the prominent thinkers of the modern period in a new light.

CARL JOACHIM FRIEDRICH.

Harvard University.

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Sinon, or the Future of Politics. By Edgar Ansel Mowrer. (London: Kegan Paul. 1930. Pp. 96.)

The remarkable thing about this little book is that it combines literary brilliance of form and originality of substance with urbane and searching scholarship. Mowrer, the Berlin correspondent of the *Chicago Daily News,* has lived abroad these last twenty years, and has combined with journalism a keen philosophic intelligence. He is already distinguished for his interpretations of American civilization in *This American World* and in the columns of the principal Continental reviews. His sense of the living present is due to his intimate touch with great events; his systematic slant on the nature of politics was in part derived from the conversation and the writings of an Italian thinker who is still too sparingly known in the English-speaking world of scholars, the late Judge Gaetano Meale, who published his *Positiva Scienza di Governo* under the name of Umano (Turin, 1922).

Following Umano, the two constants of politics are said to be: "(1) an individual and collective instinct for dominion over others; (2) the means or forces whereby such dominion can be sought, consisting of (a) a force of mind; (b) a force of bodies; and (c) a force of wealth or property." The political consequences are studied of the five principal ideas of recent times—the idea of equality, of nationalism, of individualism, of efficiency, and of internationalism. Mowrer's examination of the crisis of the modern state leads to the "paradoxical" conclusion that "stable government in large countries is impossible under present conditions," with "compromise democracy" leading toward despotism, and with despotism leading toward democracy. The available alternatives are simply downfall or the deliberate search for new modes of organization. There are numerous excellent comments on the modern problem of organization.

The present reviewer is not convinced that this statement, supported though it is by the weight of systematic political thinking, is sound; particularly is this true if the necessity for reorganization is narrowly construed to refer to the governmental patterns of culture. The political scientist is chasing a phantom when he tries to build a perpetual motion machine to grind away while he pursues his inner fancies.

Harold D. Lasswell.

University of Chicago.

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Methods in Social Science: A Case Book Compiled under the Direction of the Committee on Scientific Method in the Social Sciences of the Social Science Research Council. EDITED BY STUART A. RICE (Chicago: The University of Chicago Press. 1931. Pp. xiv, 822.)

The method of "sampling" is a fully accredited research procedure. It has been employed by the reviewer in the examination of this book. It would be unconstitutional, involving a cruel and unusual form of punishment, to require even a reviewer actually to read this bulky volume from cover to cover. Like the parson's egg, it is good in spots, but there are parts about which perhaps the least said the better.

Projected by the Social Science Research Council's committee on scientific method in the social sciences, special committees from seven of the learned societies have assisted in preparation of the volume. A corps of investigators has been employed in mapping out the fields to be covered, and forty-seven contributors have written analyses of a considerably larger number of studies. The slender, unifying thread in this congeries of essays is "method," but this concept is itself so vague and ambiguous that it is quite incapable of supporting the widely varying discussions. The reader suffers from a definite feeling of mental indigestion. By some of the writers, method is conceived as essentially a system of postulates or assumptions; for others, it is a criterion for the selection of subject-matter; for others, it is a technique for the acquisition of facts; for still others, it is an instrument for establishing correlations. In some cases the question of method is quite forgotten in the analyst's interest in other aspects of his subject. The volume is, in fact, little more than a "book of book reviews."

Many of the individual contributions are excellent and valuable. The reviewer knows of no exposition in English of the work of Auguste Comte which equals that of McQuilkin de Grange in this volume. Sidney Fay's review of J. B. Bury's *The Idea of Progress* is lucid and illuminating. Merle Curtis' review of the work of Frederic J. Turner is penetrating and useful, though it should be read in connection with the more critical study by B. F. Wright in the Spring, 1931, number of the *Yale Review*. Ferdinand Schevill's essay on Voltaire as an historian is a sparkling addition to our knowledge of the great eighteenth-century rationalist. Henri Pirenne, in "What Are Historians Trying to Do," really adds something to what might seem to be a threadbare theme. Lasswell's examination of the method of James Bryce is inter-

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esting and suggestive, and Kimball Young's review of Frederic M. Thrasher's *Study of Gangs* is interesting and informative. On the whole, the work of the historians is superior to that of any other group.

Readers of this journal may be presumed to be particularly concerned with those contributions which relate to the province of political science. These include essays by W. Y. Elliott on "The Possibility of a Science of Politics: With Special Attention to Methods Suggested by William B. Munro and George E. G. Catlin;" by Johannes Mattern on "Problems of Method in International Law," which is essentially a review of Alfred Verdross's *Concept of the Unity of the Legal Order;* by Leon E. Truesdell on "Methods Involved in the Federal Census of Population;" by E. H. Sutherland on "The Missouri Crime Survey;" by George E. G. Catlin on "Harold Gosnell's Experiments in the Stimulation of Voting"; and the one above referred to by Lasswell on "The Comparative Method of James Bryce."

Dreary wastes of this book are devoted to "attempts to determine relations among measured but experimentally uncontrolled factors," and "attempts to determine quantitative relations among measured and experimentally controlled factors." Here one finds such titles as "behavior alternatives as statistical data;" "the experimental study of attitude, meaning, and the processes antecedent to action;" "interrelations of statistical and case methods;" and "experimental determination of group influences upon mental activity." These essays bristle with the jargon of statistics, behavioristic psychology, quantitative techniques, and experimental methodology. One toils through the descriptions of the ponderous apparatus employed in the investigations reviewed with an expectancy for discoveries of signal importance, only to find that the conclusion embodies some obvious commonplace. Truly the mountain labors and brings forth only a mouse.

Underlying this volume is the assumption that social phenomena can be reduced to such scientific statement as characterizes the natural sciences. In a few instances, the contributors have raised the question of whether there is not a non-scientific element in the so-called social sciences, a normative or philosophical element. But this basic and fundamental question is nowhere fully discussed nor the implications examined. One can take his choice between an extreme behavioristic interpretation of social life which in last analysis would reduce every relationship to terms of physical and chemical reactions, or one which admits a fourth dimension of values, purpose, choice, and ends. If this fourth dimension is admitted, it so effectively alters the nature of the

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problem as to restrict the use of scientific methodology to very narrow limits. For the reviewer, the future of the social sciences (?) lies not in the realm of graphs and statistical tables, not in the sphere of tests and reaction times. Rather he anticipates for the future, what has always been true in the past, a constant reciprocal influence of event and idea. Social thought will be influenced by, and will influence, social fact. New systems of ideas will emerge to meet the altered form of social institutions. And may good fortune provide the occasional genius who from an Olympian height can re-interpret the ever-changing and never-solved problem of human life and human destiny!

WALTER JAMES SHEPARD.

Ohio State University.

Hidden Springs of the Russian Revolution. By KATERINA BRESKOVSKAIA. Edited by Lincoln Hutchinson. (Stanford University: Stanford University Press. 1931. Pp. xi, 369.)

Lenin, Red Dictator. By GEORGE VERNADSKY. (New Haven: Yale University Press. 1931. Pp. 351.)

Pan-Sovietism. By BRUCE C. HOPPER. (Boston: Houghton Mifflin Co. 1931. Pp. 288.)

The Soviet Planned Economic Order. By WILLIAM H. CHAMBERLIN. (Boston: World Peace Foundation. 1931. Pp. 258.)

Making Bolsheviks. By SAMUEL N. HARPER. (Chicago: Chicago University Press. 1931. Pp. xvii, 167.)

Why Recognize Russia? By LOUIS FISCHER. (New York: Cape and Smith. 1931. Pp. 298.)

The prevailing economic depression, which is interpreted by Soviet spokesmen as the inevitable outcome of capitalist planlessness and competition, has aroused extraordinary interest in the achievements and future prospects of the alternative economic system established in the Soviet Union. The prejudices which frequently distorted earlier American literature on this subject are gradually yielding place to objective studies based on a more thorough comprehension of the causes and aims of the Bolshevik revolution.

The political environment in which Lenin and his followers prepared for their revolutionary tasks is vividly depicted in the memoirs of "the grandmother of the Russian revolution," which, except for the concluding chapters, cover the last half of the nineteenth century. Madame Breshkovskaia, who was condemned by the Czarist government to years of exile in Siberia for her attempts to disseminate po-

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litical information among the peasants, enjoyed a brief respite during the tenure of the provisional government, headed by her friend and colleague, Alexander Kerenski, only to withdraw into exile once more on Lenin's advent to power. In the "dark" seventies, when the emancipation of the serfs had been practically nullified by the government's failure to provide adequate land for the liberated peasants, who gradually became a landless proletariat, Madame Breshkovskaia headed a group of young intellectuals who "went out to the people" and sought to prepare economic revolution in the villages. This group, which recruited an increasing number of adherents from the ranks of the intelligentsia despite persecution and exile, became known as the Social Revolutionary party during the political trials of 1877-78. In contrast to the Social Democratic party, organized in the nineties with Lenin's active participation, which regarded the industrial proletariat as the chief factor in a future revolution, the Social Revolutionaries maintained that the key to Russia's political future was held by the peasants. The hopelessness of massing ignorant and unorganized peasants for a final assault on autocracy is reflected in Madame Breshkovskaia's memoirs, together with an indomitable personal courage and unflinching faith in the ultimate triumph of her ideals.

The success of the Bolshevik revolution in 1917, effected with the assistance of disciplined industrial workers who constituted only a minority of the population, may be regarded as a vindication of Lenin's political judgment, even if it be argued that the disorganization created by the World War and accentuated by Kerenski's vacillating policy greatly facilitated the November *coup d'état*. Throughout his long revolutionary career, Lenin showed a remarkable sense of *realpolitik* and a readiness to adjust himself to existing circumstances without sacrificing his ultimate objectives. Undismayed by the fact that Russia was economically unprepared for the application of the Marxism designed for a highly industrialized economy, he set out to transform it from a country primarily agricultural into one primarily industrial, and to forge a "link" of common interests between peasants and factory workers. Lenin's views on the agrarian problem doubtless constitute his most significant contribution to economic theory, while their practical application since his death has already demonstrated their essential validity. Professor Vernadsky's competent, if somewhat chilly biography, is a valuable contribution to the study of recent Russian history, although, like all of Lenin's biographies, it fails to convey the

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temper of the man's mind, which is nowhere so clearly revealed as in his collected works.

A graphic account of the political and economic background of the Bolshevik revolution is the conspicuous feature of Bruce Hopper's *Pan-Sovietism,* which reproduces eight lectures delivered by the author before the Lowell Institute in Boston. The book as a whole, however, is not well organized, suffers from a certain vagueness, and shows a reluctance to tackle the fundamental problems raised by the Soviet system, whether defined as state capitalism or state socialism when contrasted with private management of industry and agriculture.

A more modest task is successfully performed by William H. Chamberlin, Moscow correspondent of the *Christian Science Monitor,* who lucidly sets forth in brief compass the origins and achievements of the Five-Year Plan. With admirable objectivity, he draws up the balance-sheet of the plan after nearly three years of operation; and, while careful to point out that it is as yet too early to pass final judgment on the Soviet planned economic order, he reaches the conclusion that the Soviet Union is now definitely committed to socialism. Both advocates and opponents of planned economy will find ammunition in this first-hand study, whose value is enhanced by an appendix containing translations of important documents relating to the Five-Year Plan.

Equally objective is Professor Harper's analysis of the new social types forged in the furnace of the Bolshevik revolution, whose ability to withstand the psychological strain of the Five-Year Plan may eventually determine its failure or success. The mobilization of natural resources undertaken by the Soviet government has been accompanied by a mobilization of the human *matériel,* effected by such varied means as coercion, party discipline and "socialist competition" as well as the material stimuli known to the capitalist system. This tremendous undertaking, which sacrifices the present satisfactions of the individual to the future well-being of the community, has been made possible only by the enthusiasm of the younger generation, whose mental horizon is bounded by the revolution. Professor Harper's keen analysis of the mentality of the Communist party worker, the Young Communist, the collectivist-peasant, and others serves to clarify many points which have puzzled the average observer when confronted with the apparent inconsistencies of the Russian character.

The challenge offered by the Soviet Union to capitalist institutions

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has strongly colored the policy of western countries toward the new socialist state. The exigencies of trade and politics, however, have led to the establishment of diplomatic relations with the Soviet government on the part of all important countries with the signal exception of the United States. The pros and cons of recognition are ably recapitulated by Louis Fischer, Moscow correspondent of the *Nation*, who strongly favors normal relations between the two countries. Writing in vigorous and caustic style, Mr. Fischer makes a good case for his point of view. He proves less convincing, however, when he attempts to explain the connection between the Soviet government and the Third International in a manner acceptable to the American reader.

VERA MICHELES DEAN.

Foreign Policy Association,
New York City.

The Labor Movement in Post-War France. By DAVID J. SAPOSS. (New York: Columbia University Press. 1931. Pp. xviii, 508.)

This book is the fourth of the Social and Economic Studies of Post-War France prepared under the auspices of the Columbia University Council for Research in the Social Sciences, and edited by Professor Carlton J. H. Hayes. It is based on "a detailed study of a vast mass of material issued by the government and by the various agencies of the labor movement," supplemented "by intensive field work and observation of activities in the important industrial centers of France, in the form of interviews and of attendance at meetings, conventions, strikes, demonstrations, etc." The author, a member of the faculty of Brookwood Labor College, was aided by two able research assistants, Mr. A. D. Meurig Evans and Mrs. Grace M. Jaffé, each of whom prepared about a fifth of the text.

He has given to students of economic history and politics a clear and well-proportioned picture of the development of the French labor movement during the last twelve years. Though it is clear that the Confédération Générale du Travail is still the dominant force in French trade unionism, the schismatic distintegration of union labor receives adequate attention, and the principles and practices of the various groups are set forth at length. Chapter III contains a painstaking and detailed estimate of the membership of the four national confederations and of the autonomous organizations, and the figures are analyzed as to regional, industrial, and racial distribution.

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The economist, *strictiori sensu,* should be especially interested in the ideological study, the labor statistics, the survey of trade-union activities and methods, the chapter on the attitude and activities of employers since the war, and the effective portrait of the development and present status of the coöperative movement in France. Of particular interest to the political scientist are the chapters which discuss the causes of the fractionalization of the labor movement and the probable tendencies of the different groups, the expansion of labor legislation, and the political activities and relations of labor organizations. To him, the stubborn factionalism exhibited by trade-unionism will appear an economic counterpart of the persistent multi-party political organization that has characterized popular government in France, and a study of the causes, manifestations, and probable tendencies of the one may throw some light on the other. One of the most notable developments of the period covered by the book has been the increasing willingness of influential labor leaders and groups to coöperate with the government in matters affecting labor, and the growing disposition to use political methods and machinery for attaining their ends. Students of political parties will welcome the author's portrayal of the Socialist and Communist parties, their activities, and their relations to each other and to labor organizations.

There are few countries where a study of the post-war labor movement would be more fascinating or more significant. "In pre-war days French trade-unionism was the bold leader of Mediterranean syndicalism; today it is the ardent imitator of Western European trade unionism." Professor Saposs has elaborated this thesis in a book that is scholarly, lucid, and interesting. If the same task could be performed for other important countries, we should have valuable material for an instructive comparative study in the field of economic politics.

A. R. Ellingwood.

Northwestern University.

Contemporary Social Movements. By Jerome Davis. (New York: The Century Co. 1930. Pp. 901.)

This is a book that, in spite of a somewhat curious method of editing, ought to prove really useful to those who have been searching for a convenient collection of documents and some interpretative data on the great contemporary political and social movements. Mr. Davis has

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put them all in, and a miscellaneous collection of history, biography, doctrine, and political structure for each. There are socialism and communism, coöperation, fascism, internationalism ("The Peace Movement"), the British labor movement, and so on—each with a commentary by the author to which is added a rather jejune lot of textbook questions and an uncritical bibliographical apparatus.

One ought, of course, to recognize the difficulties besetting such compilation of contemporary materials. What seems chiefly to be lacking is any selective principle, or apparent scheme of values, in the arrangement. The quotations are taken from authors of the most uneven significance, and arranged as for a battle royal, with Mr. Davis' comments obtruded into some of the selections so that it is impossible to say where the quotation leaves off and the editor's comment begins. The critical apparatus seems to the reviewer to lack a real unity of perspective on the level of judgments of value, and on the other hand to be too partisan in its selection and appraisal to claim objectively scientific character.

An example or two must suffice. Those who have read *Soviet Russia in the Second Decade* will remember Mr. Davis' useful chapters on the Communist party. Yet it must be clear to the least critical reader how largely Mr. Davis has uncritically accepted Bolshevist charts and figures, both in the original essay and in bringing these chapters up to date. One who reads the chapter on the Communist party would be hard put, also, to find the inner working of the principle of hierarchy so often stressed, through the linkages of either Communist "cells" or the more formal agencies of control. The selections on Fascism use in a laudatory manner the views of Villari, well known as a sort of official apologist of the *régime*. On the other hand, the economic aspects of Fascism from the anti-fascist point of view, and a critique of its fundamental doctrines, are signally lacking. The Communist Manifesto is printed under Socialism—not Communism—perhaps because the former comes first in the arrangement of the text. And on equal terms is included a so-called one-act play by the president of the Author's League of America which purports to give some enlightenment on the difference between the various *isms* in the volume by a series of exclamatory declamations and epithets and by a *dramatis personae* conceived in the manner of the *American Mercury*. Rather strained efforts are made to link up each movement with American conditions and interests.

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But when allowance has been made for the inherent difficulties of getting apt material in English on all the movements treated, the contribution of the volume is a real one. It may very usefully serve as a source-book, where library facilities do not provide the originals in handy form. And with judicious critical interpretation, it will certainly prove the most informative single volume that can be put into a student's hands—if one is ambitious to gather into a single *caravanserai* all the topics that Mr. Davis treats.

WILLIAM YANDELL ELLIOTT.

Harvard University.

Lords Versus Commons: A Century of Conflict and Compromise, 1830-1930. By EMILY ALLYN. (New York: Century Company. 1930. Pp. x, 266.)

This book is a lucid, accurate, well-organized history of an important constitutional struggle which lent color to nineteenth-century history and causes perplexity to politicians today. A brief introduction explains the positions of the House of Lords and House of Commons after the passage of the Reform Act of 1832. A rather cursory conclusion discusses the relations between Lords and Commons since 1911. The rest of the book is a chronological account of the relations of one house to the other in the more peaceful years between.

In surveying such an intricate and detailed story in a very limited number of pages, Miss Allyn has assembled with judgment the essential facts, and has given us what will serve as the standard account of her particular subject. The careful student of the period will perhaps learn nothing new, but he will be gratified by having these particular facts so well selected and arranged. The great value for the casual student will be the realization that the Parliament Act had behind it a century of preparation.

Miss Allyn's general historical knowledge is up to date. She points out acutely the influence of the Liberal tendency to socialism in the later part of the century, and she emphasizes (as is necessary) the continuity between the reigns of Victoria, Edward, and George. Her point of view is that which most Americans find inevitable in viewing nineteenth-century England: her sympathies are with the Liberal party. But she is historically minded and open-minded, fair to everyone, and careful (perhaps too careful) neither to generalize nor to point morals.

The bibliography is a model of arrangement. Miss Allyn is a pe-

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culiarly honest bibliographer; one might suggest that a wider use of newspapers and weekly magazines would have been helpful, but the only striking omission is Holland's account of the Parliament Act in his continuation of May's *Constitutional History of England.*

The American Historical Association, in arranging the publication of this and other works similar in origin, is wisely encouraging the scholar whose reputation is not yet established. Without meaning at all to disparage the value of *Lords Versus Commons,* it is possible to wish that its author might write another treatise on the same subject twenty-five years hence.

E. P. CHASE.

Lafayette College.

Major European Governments. By P. ORMAN RAY. (Boston: Ginn and Company. 1931. Pp. 446.)

The author set himself the task of producing a book which would serve as a "starting point in the study of European governments." Even an objective so modestly stated is not easily attained when the vastness of the political phenomena of that variegated continent is considered. The five major states, Great Britain, France, Germany, Italy, and Russia—and a minor one, Switzerland—are chosen as the most significant for study. Something more than one-third of the book is given over to Great Britain, as would seem proper, and the rest equitably distributed among the others.

The choice of topics for such an exposition must, of course, depend on the conception of the writer as to what constitutes the political elements of a given state. Some would hold that the organs of legislation and administration, the statutes, and the electoral associations of the people are only the outward and visible manifestations of the state; that the more significant elements of political action are found in the political beliefs, conceptions, and philosophy of the people, and in their class divisions, economic conditions, racial traditions and *mores.* Professor Ray has confined his treatment chiefly to the former class of facts, moved doubtless in part by the necessarily severe limitations on space, and by the exigencies of the plan which he has devised for the handling of the various topics.

Another difficulty, inherent in the subject, is the instability of the state system of that old but ever new and dynamic continent. National boundaries change and that German or Russian people whose polity

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he would describe today is not identical with the one of 1914. But more difficult still, Europe at this time presents the situation of its leading states in stages of transition from an old *régime* to the new and unknown. The political science, in a large measure, is one, not of the discovery and description of the organization and functioning of settled channels of political action, but of revolutionary events whose bases and significance are still largely unknown. Of the five major countries considered, only one, France, presents an easy mark for the technique of the political scientist. The central institutions of the three new types of government exemplified in Italy, Russia, and Germany, respectively, are well outlined; the new political forces in the British government, due to the break-down of the two-party system, are less adequately credited.

The author has followed well the announced purpose of the book, first, in choosing only the major features of each government for treatment—all of which have been handled with admirable clarity and accuracy; second, in appending to each chapter a list of topics and political events much after the idea of laboratory studies; and third, in providing an excellent thirty-page classified list of study materials coördinated with the text. The book as a whole presents a clear exposition of certain European governments, chiefly useful for beginners in the subject, and a comprehensive plan of study for those wishing to go further afield.

EARL L. SHOUP.

Western Reserve University.

Administration et Fonctionnaires; Essai de Doctrine Administrative. By ALBERT HENRY. (Brussels: Lamertin. 1930. Pp. 380.)

In this volume, M. Albert Henry has admirably withstood the temptation to write a *droit administratif* of Belgium, striking out along new lines which may well serve as a model for more intimate and illuminating studies of the public services of the Continental countries. For this task M. Henry is admirably fitted by no less than twenty-six years' experience in the Belgian bureaucracy and by a supple and discerning mind which permits him also to compose a series of *croquis administratifs,* entitled *Dans l'Antre du Cyclop.*

The present volume sets forth three general orders of ideas in public administration, dealing respectively with institutions, personnel, and methods, and uses Belgian practice to exemplify one set of solutions to

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the various type problems common to them. There are few references to the administrative practice and organization of other countries, although much is said as to the difference between business and public administration.

Sketching rapidly the contents, the reader notes in the first section, dealing with institutions, several chapters devoted to administration in general, central and local administration, the internal organization of ministries (of special interest), followed by an analysis of the essential and secondary functions of the state and a brief chapter on *quasi* public organizations. Among the latter, M. Henry notes the retirement and savings fund (1850), the Belgium national bank (1850), the municipal credit corporation (1860), the national local railway company (1885), the national water company (1913), the housing corporation (1919), the industrial credit company (1919), the national war relief society (1919), the insurance fund (1926), and the national Belgian railway company (1926). The author raises the question whether these autonomous corporations mark a national reaction against the encroachment of the state on the sphere of individual liberty. The last chapter of this section expresses some shrewd observations as to the importance of a permanent body of officials in a changing world.

In the second section, devoted to personnel, the text develops the legal relations of civil servant and the state, and proceeds to some invaluable analyses of the psychology of the Belgian civil servant (Title II, chs. 8-11). Here M. Henry, in discussing the "real wages" of administrators, puts in the balance the very real, if intangible, elements of prestige (*un caractère qui les distingue de la foule*), security, and leisure. Here also is a revealing and amusing account of the reluctance of ministers to defend the service against the attacks of the press and the public, and a bold contrast between the psychology of the civil servant a century ago, anxiously scrutinizing his conduct from day to day to avoid public offense, and the contemporary recruit to the service "dominated by anarchy or indifference." Here also is a significant survey of the ill feeling between "big business" and the administration in which the author draws from Oertel and Warnotte (Institute Salvay, April-June, 1927), an ill will, the basis of which will bear consideration even in an industrial country like the United States (pp. 249-255).

M. Henry is at his best in his analysis of the social situation of civil

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servants (Title II, ch. 11), proclaiming the cruel paradox flowing from their administrative position and their social rank. "Of all the virtues of authority, magnificence is that which best aids the exercise of power and which best disposes subordinates to obedience." The unfortunate official who lacks the private fortune to ensure magnificence has nevertheless the luxury of freedom of opinion, a relatively extensive leisure, and a sense of serving the permanent and general interests of the country.

The final section of the book is devoted to methods, a phase of administration which still lacks systematic treatment in the American literature. The author follows the general doctrine of M. Fayol, but is wise enough to understand that there is no contradiction between "*Fayolisme*" and "*Taylorisme.*" He justly protests against the contemporary demand for industrialization of state services, but seems perhaps unduly reluctant to admit that business methods have anything of value for public offices. The contrast between public and business administration presented in Chapter 3 of Title III is ably done. Parenthetically, the perplexed student who wonders what comprises a *dossier* will find the answer on page 306 of this book.

The volume concludes with a warning that any substantial decrease in the size or cost of the administrative organization can be achieved only by a modification in policy effected by Parliament, eliminating or reducing services to which the people have become accustomed. The real promise for improvement lies in providing administrators "a life exempt from material need, adorned with public consideration, and endowed with adequate independence."

M. Henry has given us a valuable and significant work characterized by shrewd insight, critical judgment, and exceptional breadth of view. It cannot be overlooked by American students of public administration.

LEONARD D. WHITE.

University of Chicago.

A Personnel Program for the Federal Civil Service. By HERMAN FELDMAN. House Document No. 773, 71st Congress, 3rd Session. (Washington, D.C.: The Superintendent of Documents, Government Printing Office. 1931. Pp. ix, 289.)

This study resulted from the Welch Act of May 28, 1928, which empowered the Personnel Classification Board to examine into certain

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phases of federal wage policies and administration, Professor Feldman being selected in this connection as a non-governmental investigator. The value of his suggestions may be indicated by the fact that his program apparently was composed in 1929 and that about three-fifths of it was already adopted by the government before the book emanated from the press in 1931. Consequently, the program already may be considered primarily as an historical contribution that might well enlighten a distinguished English commentator who as late as 1930, in an Oxford address, declared that "the American civil service is the worst in the world." Especially enlightening is Professor Feldman's book when read collaterally with the several works treating of civil service problems and improvements since 1920 as published by the Institute for Government Research—a recent one being P. V. Betters' study of the Personnel Classification Board itself.

Two primary objectives form the nuclei of Professor Feldman's thesis: the need of a comprehensive government wage policy, and an integrated personnel program; and the latter should include continuous personnel research. Among the recommendations that already have become actualities are those proposing an independent classification staff, modification of the retirement plan, and the Saturday half-holiday. Such actualities are noted in the footnotes, and other historical matters are presented in the text proper, such as educational activity, power of initiative, coördination, bonus, veteran preferences, transfers, and group representation. Further consideration is given to technical matters of contemporary or future interest, including the problems of a personnel program, geographical differentials, salary levels and automatic revisions, promotion, selection, placement, supervision, incentives, efficiency rating, removal, industrial hygiene, hours of work, vacations, redress of grievances, and kindred topics. The merit systems of Germany and England are considered with a view to profiting by the experience of those countries, especially the Whitley councils of Britain.

Professor Feldman's work has been written almost entirely from original sources and original observation of the civil service. It convinces by the sheer logic of that data. Yet it is not too technical to enrich the rapidly growing volume of readable literature on public administration.

MILTON CONOVER.

Yale University.

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State Legislative Committees: A Study in Procedure. By C. I. Winslow. (Baltimore: The Johns Hopkins Press. 1931. Series XLIX, No. 2. Pp. 158.)

Popular criticism of popular government continues unabated. The legislative department remains the target for scientific critique and unlearned blasphemy. Legislators are accused of enacting too many foolish, unnecessary, and legally defective laws; of enacting law in contempt of their own procedure and in disregard of the constitution and statutes of their state. Indeed, the procedure used for the enactment of law may have little relation to the procedure outlined by the statutes and found in the rule books.

Professor Winslow goes behind the formally stated procedure and shows how the actual practices of legislative assemblies in Pennsylvania and Maryland influence their legislative products. He asserts that "the tendency toward frequent change of recent legislation constitutes undoubtedly a criticism of legislative procedure" (p. 130). He shows by purely quantitative calculation that over half of the laws of Pennsylvania are repealed or amended within three sessions (p. 128). These figures unfortunately give no idea of the stability of much of the statute law. In the field of administrative regulation, the percentage of alteration, experimentation, and amendment is no doubt high, but in the fields of substantive law, stability remains unthreatened. Perhaps the laws enacted to care for the administrative needs of our governmental subdivisions will in the future be thought of as the minutes of some great corporation and not as statute law.

Professor Winslow's researches also show that the committee system permits the enactment of much defective legislation. For example, 104 acts were vetoed in Pennsylvania in 1929 because of alleged defects. Of this number, the governor declared eight unnecessary, forty to duplicate former enactments, twenty-one to be unconstitutional, thirteen to be inconsistent with other acts of the same session, fifteen to refer to acts formerly repealed, six to be vague, careless, ambiguous, etc. (p. 132). In order to improve conditions, the author suggests the reorganization of our legislative procedure by the elimination of useless and overlapping committees, a reduction in the number and size of standing committees, and adoption of the joint committee system in lieu of complete unicameral reorganization (p. 148). Many desirable results can no doubt be obtained under this improved procedure, but strive as we will, our government will remain "a government of men and not of laws."

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Professor Winslow's monograph is a welcome addition to the materials which will provide America with a science of legislation.

F. E. HORACK.

University of Iowa.

Interstate Transmission of Electricity. By HUGH L. ELSBREE. (Cambridge: Harvard University Press. 1931. Pp. xiv, 212.)

This study constitutes a genuine contribution to the literature of the field of public utility economics. Interstate transmission of electricity has become such a widely discussed subject that this careful monograph fills a real need for the student of utility regulation. Similar studies in regard to bus control and interstate transmission of gas are necessary. Every report of the Federal Trade Commission emphasizes the importance of interstate transmission of electricity, and the disclosures as to the intercorporate relationships of utility companies bring home the fact that a public policy must be determined in regard to interstate transmission. Mr. Elsbree's study sharpens that point, although he has not emphasized the importance of the interstate business.

It is true that a considerable debate has arisen between those who believe that the average percentage of current in interstate commerce is relatively low and those who point out that the amount of current moving across certain state lines is very high. It is also true that a single transmission rarely involves more than two states. As a matter of fact, electricity as a commodity is of such a character that it can be sold by one company to another, and inter-company arrangements are such that the present technological development of the industry is sufficient to provide for interstate transmission to a considerable percentage. Transfers are made to secure economies in holding company management, and trading of electricity is a common practice in many companies. A variation between states in percentage of interstate movement will always exist, and the question may well be asked, At what point will this problem be serious? The interstate problem is not comparable to railroads or buses or pipe lines. It is different, and to measure it in terms of railroads, as some have done, is to confuse the issue. Parent-subsidiary sales will steadily increase in the future, and the percentage of power moved across state lines will increase. This underestimation of the problem has not in any way limited the author's vigor as he has analyzed the court decisions and commissions' rulings affecting this issue.

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The author has made a most painstaking analysis of the legality of non-export legislation, and his discussion of the administrative problems involved in regulating interstate utilities is most illuminating. The final chapter is concerned with "Proposed Methods of Regulation." It is on this topic that the battle has been waged. The utilities have opposed all methods. The state commissions have done likewise, although in the 1930 convention of railway and public utility commissions a changed attitude was evident. The 1929 resolution was passed again, but the discussions showed that the Parker bus bill and Couzens power bill were being accepted. The plan of joint boards discussed by Mr. Elsbree apparently had been accepted. Out of this discussion will come a modified Couzens bill which will preserve certain powers for the state commissions and at the same time set up a national agency to act when necessary. This monograph should be read by representatives of all the agencies who are concerned as partisans in this issue. It would serve to clarify their views and eliminate some of the heat which has been developed.

After all, this is an administrative matter involving the regulation of a commodity which is not subject to control at present by the state commissions. Some agency must be created if regulation is to be effective. The utilization of the existing machinery, so far as possible, is most desirable. When that can no longer be used, a new agency must be created. That has been our experience in other matters. The advocates of the old always protest, but the task of the political administrator is to determine a means by which the new problem can be solved.

This is a most valuable study. The table of cases is useful to the researcher, but it is regrettable that a bibliography was not included. It would have been of great aid to others working in this field.

F. G. Crawford.

Syracuse University.

Criminal Justice in America. By Roscoe Pound. (New York: Henry Holt & Company. 1930. Pp. xlv, 226.)

This book presents the essential text of a series of lectures delivered by Dean Pound in 1923, written out in 1929, with, as he states in his preface, an occasional reference to subsequent events, but representing what he "thought and said" in the former year. This prefatory caution Dean Pound wisely interpolates in order to prevent the public from interpreting his views as those of the Wickersham Commission, a course

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scrupulously followed by most of the members of that commission.

The author first presents the point that for many reasons a new interest in the security of the state through the enforcement of restrictive law has developed in recent years; that this enforcement must meet not only difficulties inherent in all justice according to law, but a number of difficulties inherent in criminal law. Then follow an historical essay on English criminal justice up to Coke and Blackstone, and another on criminal justice in nineteenth-century America. Finally, there is a critical discussion of justice in the modern city, and at the end a sketch of the agencies and aims of improvement. With a recognition of these, "the paths of criminal justice will be made straight."

Dean Pound's working theory is that the main reason for the failure of criminal justice is that the institutions through which it is administered were devised to meet conditions in eighteenth-century rural England, and that the rise of great urban centers makes this machinery pathetically inadequate. Thus, to improve, bring things up to date! This is not the place to argue the fact basis for this theory. It is, to say the least, doubtful. But the purpose of Dean Pound's book is to bring about change through a hard-minded bar and an indifferent public, and his theory may be an effective way to get action to "make straight" the paths of criminal justice. It comes down to the question of what one tries to do. The statesman may build a superb structure of achievement even when his facts are unproved. If his argument stands the rack of the forum and his thesis is luminous and attractive to many people, he may force many reforms.

Many attitudes are taken by those who write and speak on social and political subjects. Two of them may help us here. The first is too confessedly ignorant to explain deeply laid causes, too meek to essay leadership, too poor in spirit to venture remedies. It writes of surface things because it knows it cannot write of deeper things. It tries to understand the understandable, to know the knowable, to write not only of its certitudes but of its doubts. This attitude may contribute to knowledge, but it fails in action. In spite of the promise of the Beatitudes, it does not inherit the earth. It would, in fact, be quite unhappy and perplexed with the earth on its hands.

Another is motivated by a sincere desire to change social and political institutions. It wants to experiment, to replace that which is outworn. It knows that so much is unknowable in social and political life

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that by the time any fact situation is brought to light, new conditions will have arisen. Therefore, out of a vast store of knowledge, and guided by a ripe reason, it makes a selection of those facts that it considers true and builds upon them a program of reform. It seeks to convince others of the validity of these reforms. It draws conclusions, ventures prophecies, describes the way to change things. It is the attitude of statesmanship.

Dean Pound's admirable book belongs to the literature of this second attitude. It deserves wide influence. It may well be taken as the inspiration and the text for the reconstruction of criminal justice in America.

RAYMOND MOLEY.

Columbia University.

Les mesures provisoires de procédure internationale et leur influence sur le développement du droit des gens. By PAUL GUGGENHEIM. (Paris: Sirey. 1931. Pp. 198.)

Those interested in the problem of improving the procedure by which international tribunals deal with controversies coming before them will welcome Dr. Guggenheim's book as the first study which has been published treating *ex professo* the interesting and important question of provisional measures. One acquainted with the complexity of the subject-matter will admire the orderly arrangement which the author has attained.

In an introductory chapter are enumerated three factors making for wider resort to provisional measures in spite of theoretical objections that any interference with the free action of states, if it is not to be regarded as intervention, must be based upon convention or the definitive decision of a competent tribunal. These factors are: (1) the likelihood that competence for provisional measures will slip unnoticed among the powers conferred on a "collective organ of the international community" by its constituent charter, or will be developed in its practice, as by the Council of the League of Nations under Article 11 of the Covenant; (2) the spread of judicial procedure, which brings in its train such measures; and (3) the value of such measures as an aid in determining the aggressor.

Dr. Guggenheim briefly refers to the analogy of similar legal institutions in the private and public law of a number of states. From a contrast of *einstweilige Verfuegung* under Article 935 of the German

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Zivilprozessordnung (to assure execution of a judgment) with that under Article 940 (interim regulation of a situation with a view to prevent irreparable injury or impending violence), the author develops his distinction of provisional measures in international matters into judicial and political. This distinction is valuable provided it is kept in mind that it is not a dichotomy, and that the wide range of measures possible in the political sphere is in no sense operative to circumscribe too narrowly the scope of judicial activity.

In discussing the various cases where provisional measures have been authorized, Dr. Guggenheim proceeds from the judicial to the political. First are treated the mixed arbitral tribunals, which dealt in reality with private law claims against vanquished states, and hence, in the author's opinion, do not furnish weighty precedent for true international tribunals. Next come the arbitration conventions of the new world, especially the Bryan treaties, from which was derived Article 41 of the Statute of the Permanent Court of International Justice. From the jurisprudence of the Court in the two cases which have arisen involving that article, Dr. Guggenheim culls four "great principles": (1) provisional measures must aim at the prevention of irreparable damage; (2) they must be in concrete form, easily executable by the parties; (3) they do not depend on the state of negotiations between the parties; (4) they do not require the presence of the court of national judges. One wonders why the author esteems these particular portions of Judge Huber's language more important than others.

Article 41 of the Statute gives the Court power to indicate measures. Many European post-war arbitration treaties, such as those of Locarno, contain an agreement to abide by and accept the measures so indicated. The author anticipates that the future will see the establishment of a similar obligation to accept the provisional measures of the League of Nations under Article 11 of the Covenant, and that the Permanent Court of International Justice will sooner or later decide that a state failing to comply with provisional measures is responsible in damages.

Eighty pages suffice for the author's treatment of judicial measures and those of mixed character resulting from the arbitration agreements mentioned above. Such treaties combine the political and judicial function, being designed to preserve the peace as well as to furnish procedure for the settlement of disputes.

The remainder of the book deals with provisional measures of political character with a view to the preservation of peace as developed

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under the ægis of the League of Nations. In addition to the practice of the League, the author treats the pact of guarantee of 1923 and the Geneva Protocol of 1924; the Brouckère report of 1926 and the committee of the Council of 1927; the work of the committee of arbitration and security; and the harmonization of the Covenant and the Briand-Kellogg Pact. In a concluding chapter is discussed the significance of provisional measures for the development of international law.

EDWARD DUMBAULD.

The Hague.

International Adjudications. Ancient and Modern, History and Documents, Together with Mediatorial Reports, Advisory Opinions, and the Decisions of Domestic Commissions, on International Claims. EDITED BY JOHN BASSETT MOORE. Publications of the Carnegie Endowment for International Peace. (New York: Oxford University Press. Modern Series: Volume I, 1929, pp. cxiii, 513; Volume II, 1930, pp. xv, 503; Volume III, 1931, pp. xxviii, 564.)

Of these volumes, John Bassett Moore, who has already made such great contributions to international law, says: "I am less concerned with nice classifications and exclusive categories than I am with adding as much as possible to the materials with which the international structure, may, especially on its legal side, be enlarged and strengthened and made more convenient and useful." Here, as in the volumes which are to follow, the editor aims to set forth the historical, political, social, and economic, as well as the strictly legal, bases for the structure which has been developing in international adjudications. Embracing in the scope of the projected undertaking all "international arbitrations with historical and legal notes," the ancient series will begin with the earliest known arbitrations and the modern with the arbitrations under the Jay treaty of 1794. The valuable essay on the historical and legal phases of the adjudication of international disputes is a worthy introduction to this modern series (pp. xv-xci).

The first two volumes in the Modern Series cover the Saint Croix River Arbitration under the Jay treaty, 1794, which is considered as of capital importance as marking for the world at large the modern revival of the somewhat disused "practice of international arbitration," and for Great Britain and the United States the beginning of amicable determination of boundary questions. The eighty pages of documented preliminary material show the serious effort upon the part of both

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sides to assure a full presentation of the case. This is followed by the complete arguments and rejoinders, hitherto unpublished, which, in nine separate discussions, total nearly eight hundred annotated pages.

While in the main the British claim was upheld by the award of the commissioners, the completeness of these documents in presenting the case in its entirety is an evidence of the great contribution Judge Moore is making to the science of international relations in its historical, political, and legal aspects. The maps, notes on the deliberations on the award, and other supplementary material, with nearly one-hundred pages of index, leave little to be desired.

The third volume of this Modern Series is "Arbitration of Claims for Compensation for Losses and Damages Resulting from Lawful Impediments to the Recovery of Pre-War Debts." This arbitration was undertaken by a mixed commission under Article VI of the Jay treaty. Judge Moore has been so fortunate as to discover much material hitherto not known or not used. There are very valuable introductory notes as to the ordering of this arbitration, and as to the meaning of words and phrases. The friction which developed among the commissioners and the withdrawal of the American members on several occasions before the final break are set forth in documentary detail. Here again much new material must be noted. The reports of British commissioners for distributing the money stipulated to be paid by the United States are also given. In an appendix of about ninety pages, the loyalist claims for relief are presented. The index is comprehensive. The difficulties and infelicities of this arbitration are by this volume shown to be even greater than has commonly been supposed.

As an earnest of what is to come in other volumes of the series, all that needs to be said of these volumes is that the series, under such editorship, will be one of the great contributions to the field of international relations.

GEORGE GRAFTON WILSON.

Harvard University.

International Law: A Restatement of Principles in Conformity with Actual Practice. By ELLERY C. STOWELL. (New York: Henry Holt and Company. 1931. Pp. xxvi, 829.)

Professor Stowell has set out to produce in this volume a work on international law which would differ from the ordinary book on the subject, and which would rest upon a very definite and distinctive

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theory. In reviewing such a book, the first thing to be done is to grasp, if possible, the intention of the author, his distinctive theory; the second, to assess the value or soundness of that theory in comparison with orthodox theory; and the third, to inquire concerning the detailed execution of the plan.

Professor Stowell wanted to produce a volume based upon observed practice rather than upon predetermined principles (p. vii). And he wanted to present international law in terms of, or upon the basis of, the system of enforcement employed to make good the rules of that law (p. ix). He sees (a) enforcement by the nation upon those persons and things subject to its jurisdiction, (b) intervention by an injured state, and (c) what he calls "vicarious enforcement" as making up that system, with (d) pacific settlement of international issues as an obligation precedent to the second form of enforcement, and (e) voluntary coöperation and (f) collective intervention supplementing unilateral national enforcement. He treats of these questions in this order: a, b, e, c, d; he then treats of the procedural law applicable in b (including limitations upon the grounds, means, and objects of intervention); and he adds a treatment of f at the end. Needless to say, Professor Stowell uses the term "intervention," in the broadest sense, to include all forms of coercion.

The reviewer believes that such a complete reversal of the familiar method of presenting international law is unsound. The older books presented the substance of the law and paid little attention to the problem of enforcement, as such, presenting even the law of reprisals and war as though unrelated to the principal rights of a state. This was unscientific and unsatisfactory, but to turn to the opposite extreme is, it seems to the reviewer, to dispel or bury too deeply what is ordinarily regarded as the main substance of the law (law of peace). He agrees that some such reorientation is desirable, but surely we have outgrown Austin sufficiently to see that the normal rights of states have some standing apart from the enforcement process.

Finally, it appears to the reviewer that Professor Stowell has run the risk of confusing the student by introducing certain topics in certain places where he has introduced them. The law of treaties may logically belong under peaceful settlement of disputes, but the reviewer doubts it; is not Professor Stowell led to put it there by his elimination, or too great reduction, of the normal rights of the state in Part I? Does angary belong under the reasonableness of inter-

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vention? Diplomatic and consular intercourse under intervention? Perhaps these questions indicate only that the present reviewer fails to grasp firmly or completely the logic of Professor Stowell's presentation. At all events, Professor Stowell has vigorously challenged our orthodox conception of the form and orientation of international law; he has certainly "given us something to think about."

PITMAN B. POTTER.

University of Wisconsin.

Post-War Treaties for the Pacific Settlement of International Disputes. By MAX HABICHT. (Cambridge: Harvard University Press. 1931. Pp. xxvi, 1109.)

Habicht's *Treaties* ranks as one of the most important publications on international relations in recent years. The writer has collected and analyzed one hundred and thirty treaties signed since the Armistice in an effort to ascertain the various methods which nations are adopting to provide for peaceful settlement of their international difficulties. Publication of the treaties alone would have justified the work. The clear and valuable summary-analysis following the compilations renders the book doubly indispensable. No one attempting to follow the progress of international affairs can afford to be without this recent work published under the auspices of the Bureau of International Research of Harvard University and Radcliffe College.

The first part of the book contains the verbatim texts of the treaties. An accurate English translation accompanies the official text in each case. Where inaccuracies in language or differences in translation are observed, the author has called attention to the fact. The treaties are arranged in chronological order of signature, with the exception of the League Covenant and the Geneva Protocol, which are placed in an Annex. Unfortunately, publication was not withheld long enough to enable the author to secure the terms of thirty additional treaties, noted in the Introduction, concluded in 1928-29 after the "compilation was completed."

The second part of the book is devoted to a comparative study of the methods of pacific settlement agreed upon in the treaties. A careful analysis is made of eleven different forms of arbitration, conciliation, investigation, and judicial procedure. The author finds that the post-war treaties differ from the pre-war ones in generally authorizing the investigator to act in the additional capacity of conciliator. While

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pre-war and post-war treaties contain essentially the same basic principles, recent agreements show progress and refinement. In addition to studying the forms of procedure, the author has inserted an informing chapter on the reservations which different states have introduced into their pacific settlement agreements.

The commentary is followed by a good bibliography, lists of present international commissioners, and a workable index. In fine, it may be said that this book is of paramount interest to all concerned with the progress of organized international society.

NORMAN J. PADELFORD.

Colgate University.

Liberalism in Mexico. By WILFRID HARDY CALLCOTT. (Stanford University: The Stanford University Press. 1931. Pp. ix, 410.)

Mr. Callcott reviews the history of Mexico since the adoption of the constitution of 1857, basing his study for the period before the adoption of the constitution of 1917 chiefly on Mexican materials, and for the later years to a greater extent on the secondary American studies of recent developments. The discussion is elaborately documented and followed by a select bibliography. It is a valuable addition to the growing material which reflects the increasing interest of foreigners in the complex geographical, racial, economic, and political conditions with which the greatest of the Latin American republics of North America has to deal.

The treatment is chronological. There are no chapters giving a survey of what have been the objects and attainments of the various liberal movements which have been brought about or been set in course by the revolutions since 1910. This is to be regretted, for in the serial recounting of the progress or failure of the diverse social experiments in short periods—usually the administrations of the presidents—the course of each is not infrequently obscured. The reader would welcome the addition of chapters which set out topically the author's conclusions as to what are the most significant movements in Mexican liberalism, what their announced purposes have been, and what they have accomplished.

The movement for church reform, which the author has explored in greater detail than that in other branches, stands out with satisfactory clearness, as does also the effort which far-seeing Mexicans have made for the elimination of illiteracy, too often hampered by the

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limitations placed on their freedom of action by politicasters. The pictures are less clear as to the ideals, accomplishments, and disappointments of the movements for reform of landholding, for ameliorating the position of the laboring classes, for strengthening the local credit systems, for improvement of transportation facilities, for modification of the position of the army, for modernization of electoral methods, and for the strengthening of the budget and public finance in general.

Mr. Callcott's volume is not a propagandist treatise. He advocates no cause, but sets out as the events occur what an impartial student sees of both the victories and defeats of the social transformations which started now some two generations ago, to be stimulated in their economic aspects and retarded in others by the Diaz régime, and finally in 1910 to break out again in a new series of revolutionary activities. He is not blind to the fact that the millenium is not won in a day, to the fact that even some of those who have headed reform movements are unwise in the policies they have adopted, if not actively self-seekers, and to the fact that some of those who have been whole-souled in their enthusiasms have been attempting the impossible. For this balance, too frequently lacking in current discussions of Mexican developments, Mr. Callcott's chapters are much to be commended.

CHESTER LLOYD JONES.

University of Wisconsin.

French Public Opinion and Foreign Affairs, 1870-1914. BY E. MALCOLM CARROLL. (New York: The Century Company. 1931. Pp. viii, 348.)

The importance of public opinion and the recognition of it by the principal governments of Europe was clearly shown by the many-colored war documents issued in 1914 to gain public support. Dr. Carroll, in this illuminating study of French foreign policy from the Franco-Prussian War to the World War, reveals the rôle of the press and public opinion in this most vital period of European history. It is kaleidoscopic in its presentation, and therefore somehow leaves the more vivid impression upon the reader.

The files of the European press have been exhaustively and intelligently combed. Not merely has the author utilized the widely read French journals such as the *Matin, Temps, Figaro, Journal des Débats, Petit Journal, Petit Parisien,* and *Écho de Paris,* but he has searched

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the files of the chauvinist *Paris-Midi* and *Patrie,* the conservative *Gaulois,* the nationalist *Presse,* the radical *Lanterne, Rappel,* and *L'Humanité.* He has often quoted the *Dépêche* of Toulouse, the *Lyon Republicain,* and the *Petite Gironde* of Bordeaux. The English newspapers—the *London Times, Daily Telegraph,* and *Morning Post*—and the German *Berliner Tageblatt, Kolnische Zeitung,* and *Frankfurter Zeitung* have also been carefully scrutinized.

This scholarly study explodes some of the cherished myths of European diplomacy, such as the over-emphasis placed upon the Ems despatch, and illumines such incidents as the sudden and overwhelming downfall of Jules Ferry. The reader gains a clear conception of the importance of Paul Déroulède's Ligue des Patriotes. The more sinister rôle of the Russian subsidized press in the Balkan crisis is not minimized. The *revanche,* if interpreted as a desire for the return of Alsace-Lorraine by force of arms, is shown to have had little influence upon public opinion in causing the World War.

In spite of the vast amount of material examined and the exhaustive research indicated, the book is very readable, and the author, by his careful and logical analysis, guides the reader successfully through the tortuous paths of pre-war European diplomacy. No student of present-day Europe can afford to overlook this study.

GRAHAM H. STUART.

Stanford University.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND CONSTITUTIONAL LAW

Professor W. W. Willoughby has rendered an immeasurable service to students and teachers of government by preparing an abridged edition of his recently reviewed three-volume work, *Constitutional Law in the United States* (1929). The aim of the recent volume, *Principles of the Constitutional Law of the United States* (Baker, Voorhis and Company, pp. lxxxix, 884), is to present the important "principles of American constitutional jurisprudence in a form suitable for class-room use." In carrying out the purpose, an attempt has been made to cite the cases which not only illustrate the principles discussed in the text, but are also the most important for analysis and study by the student. In addition, the author has given attention to questions of constitutional interpretation which are still of a con-

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troversial nature—as, for example, the effect of the Myers decision on the power of the President to remove the comptroller-general of the United States—as well as the more or less settled doctrines. The various chapters dealing with such topics as the division of powers between the United States and its member states, federal supremacy, separation of powers, territories, the organization and procedure of Congress, political questions, and the powers of the President are enriched by the author's previous work in the general field of political science. These portions of the book are of especial interest, as are also the chapters dealing with the organization, jurisdiction, and powers of the federal courts, due process of law, and the police power. The book is one which should be of unlimited service to the general student of American government who wishes to find an up-to-date and authoritative interpretation of the constitution, as well as to the specialist in the field of constitutional law proper. The usefulness of the book for this and other purposes is increased by numerous references to treatises and articles, by the orderly and systematic arrangement of the topics, and by the detailed analytical table of contents and index which assist the reader in looking up even the most obscure point with a minimum of effort. The larger work on which the student's edition is based was reviewed at length in this journal for August, 1930 (pp. 746-748), and the reader is referred to that source for a more complete account of Professor Willoughby's important contribution to a better understanding of the principles of the American constitutional system.

In the eighth edition of *The Tariff History of the United States* (Putnam's, pp. xii, 536), Professor F. W. Taussig has added a chapter on the tariff act of 1930 in which he discusses the conditions which led to the passage of the act, the proceedings of Congress in its enactment, the commodities affected, and the flexible provisions. The author points out that although the tariff acts from 1883 to 1922 were "explicable on the ground of some special occasion for a general revision, either an admitted need of overhauling, or a party overturn, or some financial or economic stress . . . nothing of the sort can be said in explanation of the tariff of 1930." The explanation is to found in the agricultural situation and the demands of the farmers, who felt that they had a grievance; also there was the added factor of inefficiency and lack of leadership in Congress in handling the whole tariff question. In the

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opinion of the author, the act of 1930, regarded as a whole, "must be characterized as futile." The powers and duties of the Tariff Commission remained unchanged except that the way was opened for a change in personnel. Although Professor Taussig has not lost faith in the possibilities of the Tariff Commission, there is a note of discouragement in his observations on the subject; the make-up of the commission under Presidents Harding and Coolidge "was not such as to command respect either for intellectual capacity or for judicial spirit." But he goes on to say: "All this experience, however, discouraging though it might be, was not to be set down as conclusive. Moves for improvement in our political system proceed by slow steps. There is no immediate attainment of the goal, but trial and error, sobered sense, gradual advance. The various commissions established of late by the federal government—the Interstate Commerce Commission, the Federal Trade Commission, even the Federal Reserve Board—all had this sort of history. The politicians tried to feather their nests; the 'interests' tried to shape the new political instruments to their ends. As time went on, standards became higher." Professor Taussig expresses some such hope for the Tariff Commission.

My United States (Scribner's, pp. xiv, 478) is the autobiography of Mr. Frederic J. Stimson, eminent lawyer, former professor of government in Harvard University, ambassador to Argentina, and author of *Popular Law Making; Constitutions, State and Federal; The American Constitution,* and *The Constitution as it Protects Private Rights.* The first half of the book contains the personal reminiscences of the author and his general observations on public affairs, on political and social movements, and on leading personages, especially Roosevelt, Taft, Hughes, Bryan, and Wilson. The second part of the book is taken up largely with a most interesting account of the author's experiences as ambassador to Argentina during the war years and after. Here one will find accounts of intrigue and espionage that make as interesting reading as any piece of fiction, and will obtain information regarding the deficiencies of the State Department in dealing with its agents abroad, and observations on the workings of the Argentine government and on relations between the United States and South American countries. Those who wish to obtain first-hand information regarding our diplomatic service and the observations of a scholar and gentleman of the old school on public affairs, as well as those who have had the

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pleasure of knowing Mr. Stimson personally, will enjoy and profit from a reading of this book.

Mr. Hiram T. Gilbert, author of the original bill proposing a unified municipal court for the city of Chicago, has prepared an interesting and exhaustive study of the workings of the court under the title *The Municipal Court of Chicago* (Published by the author, pp. xxviii, 599). The purpose of the study, as set forth by the author, "is (a) to give a brief history of the drafting and adoption of the provisions of the Municipal Court Act and of subsequent efforts to change the methods of transacting business in the courts of this state; (b) to show some of the good which has been accomplished by the court, as well as wherein it has failed to meet the just expectations of the people, and to locate to some extent the responsibility for such failure; (c) to point out some of the evils in the administration of justice in the city of Chicago which need remedying; (d) to present the provisions of the Municipal Court Act which are now in force and the rules of court adopted in pursuance thereof, together with such annotations and explanations as may be deemed more or less useful to attorneys and counsellors at law in the transaction of their business in the court, and (e) to recommend a scheme for a judicial tribunal which, if adopted and supplemented by other measures suggested, will, it is believed, make it possible to secure a prompt and proper disposition of civil as well as criminal cases." The author makes the observation that the present "method of electing judges of the Municipal Court of Chicago is a breeder of corruption," and is of the opinion that the most serious problem is the elimination of partisan political influences, especially in the process of nomination and election. Recognizing the fact that popular election is necessary under the Illinois constitution, he proposes practical methods for improving the methods of nomination and election, and also recommends that the terms of judges be increased from six to twelve years. There are also numerous suggestions, covering almost eighty pages, for methods of reorganizing the procedure and methods of the court. Although limited to a study of a court in a single city, the treatise emphasizes principles and is filled with material regarding the general problem of judicial administration in metropolitan areas.

The second volume of *The Minnesota Year Book, 1931* (pp. 392), edited under the joint auspices of the League of Minnesota Municipali-

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ties and the Municipal Reference Bureau of the University of Minnesota, of which organizations Dr. Morris B. Lambie is the executive secretary and chief of staff, respectively, maintains the same high standard that was set by the first volume covering the year 1930. Although intended especially for officials and citizens of the state of Minnesota, the work contains a wealth of information and illustrative data for students of state government throughout the country. It should also furnish a model for other states to follow. Included in the material offered are explanations of the organization and activities of the state, city, village, and county governments, together with charts, diagrams, and illustrations; tables and digests of statutes regarding taxes, assessed valuations, indebtedness, special assessments, increases in taxation; data on public utilities, including a description of various plants and distribution systems; election procedure; a directory of state and local officers; and a calendar of dates which are of importance in the conduct of the state government. Especially interesting is the section devoted to the regulation of business, professions, and occupations. There are some seventy more pages of material than in the 1930 edition. Another bulletin of the University of Minnesota contains the proceedings of the *Conference on Governmental Relationships* (pp. 138), held at the University in July, 1930. The papers submitted at the conference dealing with the general question of the proper relationships between different units of government—state, county, city, village, township, and school district—in the administration of such public activities as law enforcement, public health, utility regulation, finance, and education are here presented. The most important papers are those on "The Administration of Criminal Justice," by Raymond Moley; "Local Health Organizations," by Dr. John A. Ferrell, of the Rockefeller Foundation; "Utility Regulation and Centralized Management," by E. W. Morehouse, lately of Northwestern University; "Trends in Public Utility Regulation," by John Bauer; and "The Classified Property Tax in Minnesota," by Professor S. E. Leland. The volume is edited by Morris B. Lambie.

The 1928 Campaign: An Analysis (pp. xii, 129), by Roy V. Peel and Thomas C. Donnelly, has been published by Richard R. Smith, Inc. There is more of political science in this slight volume than is contained in many a ponderous tome purporting to deal with government. The authors have set out to analyze the campaign from the pre-convention activities on through the entire course of the Hoover-Smith

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struggle for the presidency. They have accomplished their purpose well. The discussion of the tactics and strategy of the conflict is particularly illuminating, and the consideration of the respective candidates' traits for leadership is revealing. The monograph is an intelligent treatment of a colorful campaign. The booklet was originally published by the New York University Book Store. In reprinting, there has been added an appendix containing the Republican and Democratic platforms, tables of votes, and a select bibliography.—E. P. H.

The Oxford University Press has brought out an account of American history by Samuel Eliot Morison and Henry S. Commanger which is based to a large extent on Professor Morison's *Oxford History of the United States*. Some fifteen new chapters have been added, and there is in some instances a somewhat different point of view as a result of the fusion of the ideas of Professor Commanger with those of the original author. *The Growth of the American Republic* (pp. vii, 956), as the new work is called, gives considerable attention to constitutional development, political theories, and legal institutions, along with the usual historical narrative. Like other works by Professor Morison, the book is good literature as well as good reading.

With a view to supplying universities and colleges with a brief discussion of the essentials of city government suitable to a single-term course, Professor Austin F. Macdonald has prepared *A Short Course in American City Government* (Thomas Y. Crowell Co., pp. ix, 470), an abridgment of his longer text, *American City Government*. Beginning with the social problems of the city, chapters on growth and history lead to a treatment of city-state relations and metropolitan government. A brief outline of "theories" of city government—division of powers, short terms, rotation of office, spoils systems, and long ballots—is preparatory to chapters on municipal framework, followed by descriptions of more specialized functions and methods—judicial, electoral, administrative, and financial. The text is readable, elementary, and conventional. "Selected references" conclude each chapter.—J. F. S.

In Smith College Studies in History (Vol. XVI, Nos. 1-2, October, 1930-January, 1930, pp. 106), Ellen Elizabeth Callahan presents *Hadley; A Study of the Political Development of a Typical New England Town from the Original Records (1659-1930)*. The author's purpose is

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to trace the political development of the town from its origin to the present—not only to show the effects of social and economic pressure on local government, but to indicate the reaction of state and national issues on the politics of the community. The work is done with thoroughness, interest, and understanding.—J. F. S.

The department of political science at Williams College has issued a mimeographed *Report on the Cost of Administration of Criminal Justice in the City of Pittsfield, Massachusetts* (pp. 66), which contains not only detailed statistics on the subject but also much interesting data regarding social, economic, and political conditions in a city of moderate size. The report has been prepared by Dr. Charles Fairman and Dr. Donald C. Blaisdell, together with three undergraduates, C. F. Skeele, W. M. Hyde, and W. C. Smieding. The booklet furnishes an example for similar investigations elsewhere.

FOREIGN AND COMPARATIVE GOVERNMENT

E. P. Dutton and Company have brought out a translation of Edmund von Glaise-Horstenau's *The Collapse of the Austro-Hungarian Empire,* by Ian F. D. Morrow (pp. 347). The scope of this volume is wider than its title might suggest. About a third of it is devoted to the activities of the subject nationalities within, and of their emigrant brethren without, the Dual Monarchy. They were trying to work up propaganda in support of independent national states which should rise on the ruins of the Hapsburg structure. So the reader will find much about the clever activities of Beneš, Masaryk, Trumbić, and the ways in which they were aided by Dr. Seton-Watson and Mr. Wickham Steed in England and by other sympathizers in the United States. For this part of his narrative, the author has evidently drawn primarily from the memoirs of the many writers whom he lists in the bibliography at the end of his volume. It is an exceedingly convenient synthesis, clear and reliable. For the rest of the work—the shifting ministries at Vienna, the friction with the German ally, the growing disaffection in the army, and the increasing hunger among the civilian population—the author can rely more upon his own personal experiences and his close contact with leading officials, as well as upon the War Archives at Vienna of which he is the director. He shows very skillfully the interaction of military and political events, and gives the reader a vivid sense of the tragedy which gradually overtook the

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supporters of Emperor Charles and the old Austro-Hungarian monarchy. After these loyal officials saw the Czech, Polish, Jugoslav, Rumanian, Italian, and other nationalities growing in strength and in favor with the Entente Powers, they then had to face the defection of Turkey and Bulgaria and the Karolyi revolt in Hungary itself. World forces were at work of which men were no longer masters. The ancient Hapsburg heritage collapsed. Colonel von Glaise-Horstenau has written an excellent book. He has told the intricate story of the last two years of the war as seen from Vienna and as it affected the fate of his country. He has told it clearly and effectively, and sadly also, but without recrimination or bitterness. The breadth of his story is indicated by the fact that the sixty-four portraits, which add to its interest, include most of the leading statesmen of all the Great Powers, as well as many Austro-Hungarian lesser lights.—S. B. F.

Professor A. B. Keith's little volume on *Dominion Autonomy in Practice* (Oxford University Press, pp. 92), comprises the boiled-down essence of the distinguished author's views on the legal relations of the Dominions to the United Kingdom. It represents a revised edition of the previous condensation called *Dominion Home Rule in Practice*. The change in the title indicates the new status, which Professor Keith does not accept as tantamount to a juristic personal-union relationship. However, he does recognize certain advances along that road against which he had previously warned the Empire in his *Sovereignty of the British Dominions* (1929). The volume under review seems to be reconciled to the disappearance of several legal vestiges, although Professor Keith still maintains the formal legal unity of the Empire, so long as the Parliament at Westminster can legislate for all with the consent of the Dominions. He stresses the retention of the Great Seal in England (the Irish Free State has since got one of its own). Appeal to the Judicial Committee he thinks to be ultimately untenable against Dominion opposition; and he takes a surprisingly liberal view of the surrender of the right of disallowance over Dominion acts that might be considered to impair a loan under the Imperial (1900) Colonial Stocks Act as a trustee security in the United Kingdom. These cases, if they occur, he thinks might properly be left to the proposed inter-Imperial arbitral tribunal—which he would like to see linked to a somewhat revised and strengthened Judicial Committee of the Privy Council. Apparently he is here taking a leaf out of the American book, and falling

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back on judicial review to accomplish an act that might be politically dangerous. The book is an admirable summary of the views of the leading commentator on the old constitutional system. It suffers by a legalistic emphasis where the new constitution rests postively upon the understandings worked out in definite form in the proposed Statute of Westminster. In the restricted scope, it is not to be wondered that the positive side of the functioning of imperial coöperation gets slight treatment.—W. Y. E.

Two Years of Nationalist China, by Dr. Min-Ch'ien T. Z. Tyau (Kelly and Walsh, Ltd., Shanghai, pp. 523), is regarded by authorities who have visited China recently, and have followed developments there, as the best compilation of information regarding the government and administration of that country. The author begins his work with an historical summary of the movement for national unity (1926-30). This account is followed by chapters describing the Kuomintang, or Nationalist party, and its relation to the government, and on the organization and functions of the national government. The remainder of the book is devoted to an explanation of the work of the national administration, including home affairs, foreign relations, military administration, the navy, agriculture, education, transportation, etc., and to such subjects as legislation, local government, justice, and civil service. There is an abundance of elaborate illustrations, charts, and diagrams to make the exposition more understandable, and there is an appendix containing such material as the manifesto of the first National Congress, resolutions of the third National Congress concerning political matters, important treaties, and the personnel of the national government as of June, 1930. Although the volume is materially propaganda, it is regarded on the whole as a fair-minded and accurate description of the organization, aims, and accomplishments of the national government.

Perplexed Americans, seeking to disentangle and assess the pros and cons of prohibition, will turn with eagerness to Mr. John H. Wuorinen's *The Prohibition Experiment in Finland* (Columbia University Press, pp. viii, 251). There they will find described, however, a situation so like that which confronts them at home that they will probably come off with about the same opinions or doubts with which they approached the volume. Not that Mr. Wuorinen does not treat his sub-

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ject exhaustively and candidly; his book is a model of painstaking investigation, clear-headed interpretation, and cautious conclusion. He quite frankly doubts the wisdom of "legislative compulsion" as a method of dealing with the drink problem; and he certainly shows that Finland is very far from having settled the matter for herself by the prohibition law of 1917 and its later amendments. But the evidence which he advances, in most scientific fashion, to be sure, is of precisely the kind which, when brought out in respect to our own American situation, unhappily tends only to supply fresh argument almost equally for two diametrically opposed lines of social policy. Students of political science and sociology will, nevertheless, find the book of decided interest and value.

INTERNATIONAL LAW AND RELATIONS

The Anglo-Japanese Alliance (pp. 111), by Alfred L. P. Dennis, published as the first number of the first volume of the University of California's Bureau of International Relations publications, is a distinguished beginning for the series. It carries the history of the alliance up to October, 1921, and in an appendix gives the Four-Power Treaty by which the Washington Conference in 1922 provided for the termination of the Anglo-Japanese Alliance. Mr. Dennis has carefully traced the conditions which brought about the agreement of alliance of 1902 and its renewal by the treaty of alliance of 1911. Fear of Russia was played upon by both parties, he shows, but England profited by having refrained from joining the Continental powers in forcing the revision of Japan's peace-terms to China, and by having been the first European power to give up extraterritoriality in Japan. The treaty in its original form was to have extended to the whole "Far East," thus guaranteeing British interests in India as well as China, in exchange for recognition of Japan's claims to a special position in Korea. But the actual treaty did not go further than to assure neutrality of the other power in case either should be engaged in the "Extreme East" with a single belligerent, as Japan refused to underwrite the British Raj in India. However if a second foreign enemy intervened, the treaty concluded a mutually defensive alliance. American interests in the open door policy were placated, but both Germany and Russia, and to some degree France as well, saw in the treaty a potential threat. The most interesting subsequent observations of Mr. Dennis are those

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which show how the feelings of the Dominions, and a natural desire also on the part of England to avoid offending the United States, led to the inclusion of Article II which was generally thought to be aimed at excluding Great Britain from any obligation to go to war with the United States—although in fact the arbitration treaty on which England was relying was rejected by the United States. Because of the real aid furnished by Japan in the transportation of Australian and New Zealand troops and the desire of those Dominions to avoid antagonizing Japan, it was the Dominion of Canada, Mr. Dennis shows, that was mainly responsible for bringing up the termination, or the supersession, of the alliance in 1921. The Imperial Conference of that year had prepared the way for the skillful diplomacy by which Lord Balfour succeeded in substituting the joint Four-Power Treaty of Guarantee, in which France and the United States were associated, for the older Anglo-Japanese alliance. Mr. Dennis' study is, within the scope attempted, a thorough and scholarly piece of work, characterized by brilliant interpretation as well as by sound research.—W. Y. E.

International Affairs, issued every two months as the Journal of the Royal Institute of International Affairs in London (Chatham House, St. James Square, S.W. I), is one of the most useful publications on international and British imperial topics available to students. Most of its articles represent addresses to the Institute by prominent public figures, British and foreign. Unfortunately from the point of view of students, but quite understandably, many of the most confidential talks to the Institute (which only British subjects may attend) are unreported or discreetly edited. But a sufficiently "unbuttoned" attitude marks most of them to make interesting and useful background—as when Sir Malcolm Robertson explains the real stakes of Great Britain in Argentina and how they are maintained. The reviews are, on the whole, carefully and authoritatively done by competent specialists. Indeed, the utilization of experts of an unofficial character to discuss and advise on matters affecting the wide range of British imperial policy has been enormously aided by the creation of Chatham House, with its splendid library and its special study groups. Arnold J. Toynbee, Commander King-Hill, J. W. Wheeler-Bennett, and others carry out the editorial duties of the large work of the Institute, which includes the yearly *Survey of International Affairs* and the weekly *Current International Topics.* The July, 1931, issue of *International Affairs* (Vol.

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X, no. 4) is a typical number. It contains articles on "The Soviet Five-Year Plan," by H. R. Knickerbocker; "The Austro-German Customs Union," by Dr. Moritz Bonn; "Historical Parallels to Current International Problems," by A. J. Toynbee; a report of discussions on "Canadian-American Relations" held by the Montreal branch of the Canadian Institute of International Affairs; "The Private Manufacture of Arms, Ammunition, and Implements of War," by Colonel David Carnegie; "The International Wheat Situation," by Mr. F. L. McDougall; an account of the "Reception in Honour of Dr. Brüning and Dr. Curtius on June 8, 1931;" and the usual reviews and notices of new publications on international affairs. To American scholars, properly qualified and introduced, the library at Chatham House offers a most valuable collection both of documents and secondary materials. The greatest courtesy and all available facilities for study for a reasonable period are extended to those who have inquiries to pursue in which the Institute's library can offer special assistance.—W. Y. E.

Mr. Ray W. Irwin, author of *The Diplomatic Relations of the United States with the Barbary Powers, 1776-1816* (University of North Carolina Press, pp. 225), believes that his narrative will furnish a more comprehensive survey of the diplomatic relations between the United States and "Barbary" between 1776 and 1816 than any previous monograph has provided. He has had a splendid opportunity to make good such a claim, as he has been the first to exploit the unprinted material on the subject in the archives of the Department of State; he has used an impressive array of other printed and unprinted sources; and he has had the advantage of several very creditable studies by other investigators of various phases of those relations. Despite the opportunity, the book can scarcely be considered a serious contribution. The summary in the last chapter reveals nothing that has not been more clearly presented by C. O. Paullin, Gardner Allen, or Emile Dupuy. The body of the work presents a mass of details never subordinated to any clear perspective or built into any constructive whole; in short, it is another case where the writer has not been able to see the forest because of the trees; the result is a pedestrian stepping over sticks and logs with no clear vista anywhere in sight. The general historian of American diplomacy can get little from it. If he wants more than had already been available, he must himself go to the sources which Mr. Irwin enumerates in his bibliography. The book has been excellently printed.—S. F. B.

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In *Germany and the Diplomatic Revolution; A Study in Diplomacy and the Press, 1904-1906* (University of Pennsylvania Press, pp. 233), Oron J. Hale makes an admirable cross-section of the interaction of the press and diplomacy in the period of the first Morocco crisis. This was a diplomatic revolution in the sense of grouping the Great Powers into the two hostile diplomatic combinations which clashed in 1914. The author brings to bear all that he finds in the French, English, and German newspapers and recently published documentary material. Perhaps his most interesting revelation is the legendary character of the generally accepted story that Delcassé was ousted from the Quai D'Orsay because Germany sent Count Henneckel von Donnersmarck on a special mission to Paris to demand his head. Mr. Hale shows conclusively how this legend originated in the fictitious account of the Paris *Gaulois* a few days after Delcassé's dismissal, and how it then came to be accepted by French public opinion as gospel truth. It is true that in other ways Germany had exerted some pressure for the removal of the foreign minister whom she could not trust. But the main reason why Delcassé was thrown overboard was the fact that the contemporary French press itself, led by Clemenceau and followed by the premier, M. Rouvier, feared and disapproved Delcassé's anti-German policies. Later on, the legend started by the *Gaulois,* that Germany had humiliated France by brutally interfering in her internal affairs by the demand for the removal of her foreign minister, contributed powerfully to the revival of French nationalism and to the determination to risk war rather than submit to another such humiliation.—S. B. F.

The League Committees and World Order: A Study of the Permanent Expert Committees of the League of Nations as an Instrument of International Government, by H. R. G. Greaves (Oxford University Press, pp. xii, 266), written at the Postgraduate Institute of International Studies at Geneva, represents tremendous labor in the discovery and collation of data and much painstaking and patient reflection on the part of the author. He presents here an analytical introduction; a study of more general types of technical committees (economic, financial, health, intellectual coöperation, communications and transit, labor) in Part I; and a study of more highly specialized committees (mandates, disarmament, children, opium) in Part II. A conclusion sums up the theoretical deductions of the writer. The principal issue which Mr. Greaves raises is the question whether the technical expert or the technical committee can function in the field of international

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government upon a basis other than that of national government instruction. Presumably that basis would be the ideal of international social welfare plus the facts and principles of international social life, as seen and understood by the expert. The reviewer does not believe that Mr. Greaves succeeds in showing any considerable amount of escape on the part of the expert from the trammels of national political control. The situation here is about what it is in national governmental practice. It is, however, very interesting and informing to have so thorough and penetrating a study of the problem upon the international plane as that which Mr. Greaves has given us.—P. B. P.

Professor Charles Hodges has added another volume to the growing shelf of texts on international relations with his *The Background of International Relations* (John Wiley and Sons, Inc., pp. xvi, 743). The subtitle, "Our World Horizons," suggests the author's emphasis upon national interests and their repercussions on the organization of a world society. The main divisions of the book are headed "Realities," "Foundations," "Structure," "Working Forces," "World Horizons," "Consequences," "World Power." The author's style is popular, almost journalistic. There are a number of "world-affairs maps" similar to those which Professor Hodges has edited for the *League of Nations News,* and also a good many illustrations. The book suffers as a college text—though not as a book-of-the-month volume—from the author's rather frequent reliance upon generalization, and his apparent emphasis upon the literary rather than the reference value of a good many of his paragraphs. Opinions often take the place of tables or other illustrative materials. There is an encyclopedic list of readings and sources, conveniently collected at the end of the volume, but in such small print that few students will be likely to turn the pages to pursue them; while the index of less than seven pages is sufficient to cover only the most important topics in this inclusive volume.—P. B. P.

In the years during which the mandates system has been in operation, there has accumulated, primarily in the form of the reports of the mandatory powers and the minutes of the Permanent Mandates Commission, a vast mass of documentation which has, on the whole, been relatively little explored. Such exploration as there has been has tended to confine itself to the somewhat futile search for the precise location of sovereignty, and unfortunately little attention has been paid

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to the substantive effect of the mandates system on colonial government. *Land Problems and Policies in the African Mandates of the British Commonwealth,* by Nick P. Mitchell, Jr. (Louisiana State University Press, pp. xvi, 155), abandons this search for sovereignty in favor of examination of a particular and crucially important aspect of the colonial and mandates problem. Much interesting material is brought to light, and the value of this mass of readily available information for the student of colonial affairs is amply demonstrated; yet Mr. Mitchell's final results are somewhat meagre. Rather surprisingly, little reference is made to the work of the Commission itself, and the reader is left in considerable doubt as to whether the fact that the areas under discussion are mandates, and not simple dependencies, is of any substantial significance.—R. E.

The Carnegie Endowment for International Peace has published a translation, by Edwin H. Zeydel, of Dr. Wilhelm Kiesselbach's *Problems of the German-American Claims Commission.* This brief analytic study of some 135 pages by the German member of the German-American Mixed Claims Commission comprises a statement of the problems faced by that body. In the original German publication, it accompanies a collection of the decisions down to 1927. The translation contains brief sketches designed to introduce and coördinate the decisions themselves. The author early asserts that his point of view is naturally coincident with his function as German commissioner. Only the most important problems which came before the Commission are touched upon. An attempt is made to indicate the importance which the Commission attached to general principles of law in its approach to the so-called American neutrality claims and to the reparations claims proper. The author stresses the work of the Commission in the direction of clarification of these problems by continual recourse to legal principles. Claims arising from matters involving private law alone, e.g., the so-called private debts, are not touched upon in detail. Beginning with an analysis of the history and duties of the Commission, Dr. Kiesselbach sketches the problems arising out of the neutrality claims, nationality of claims, *Lusitania* cases, life insurance claims, marine underwriters' claims, corporation claims, naval and military works, and includes a study of the legal doctrine of causal connection or causality in connection with the extent of Germany's obligation to compensate for damage to property.—A. E. H.

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The Naval War College discussions on international law for 1929, led, as in the past, by Professor G. G. Wilson, and published by the Government Printing Office under the well-known title of *International Law Situations, 1929* (pp. 163), undertook consideration of three important situations. The first revolves around questions of foreign vessels and neutral obligations. In particular, attention is devoted to radio apparatus and radio transmission while in port. The second problem involves the status of the islands in the Pacific Ocean. This section contains an exceedingly able and valuable analysis of the rights, obligations, and status of the mandated areas in the Pacific. The documentation on this problem is the finest to be found. The third section is devoted again to questions of neutrality. A series of cases involving transportation of forces, public merchant vessels, supplying ships at sea, and use of cables is taken up. The usual case-solution method is used. This year's publication is unusually well documented, and will be found to be a very useful and valuable publication.—N. J. P.

The World Peace Foundation has published a handbook entitled *Courses on International Affairs in American Colleges* (pp. xviii, 353), edited by Farrell Symons. Professor James T. Shotwell has written an introduction outlining the development of instruction in the field of international relations, most of which has grown up since the World War. For each college there is given a brief description of the various courses and a list of instructors. There is also a table with a comparative analysis of courses by colleges and subjects. Another useful handbook in the same field is *Centers of Reference for International Affairs,* compiled by the International Institute of Intellectual Coöperation (Paris, pp. 163). The purpose of the handbook is to help the student of international affairs to discover and obtain access to the most suitable foreign sources of information on international political, economic, social, and legal problems. For each center the booklet gives a brief description of its object, organization, and activities, together with the names of its officers and a brief analysis of its principal publications.

An excellent selection of Viscount Grey's *Speeches on Foreign Affairs* (London, George Allen and Unwin, pp. 320) has been published under the editorship of Professor Paul Knaplund, of the University of Wisconsin. The speeches cover the period from the Anglo-French entente of 1904 to the outbreak of hostilities in 1914. As would be antici-

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pated, these addresses do not throw any new or valuable light upon the position or policies of Lord Grey.

POLITICAL THEORY AND MISCELLANEOUS

The Columbia University Press has published a new doctoral dissertation, *Proponents of Limited Monarchy in Sixteenth Century France: Francis Hotman and Jean Bodin* (pp. 210), by Beatrice Reynolds. The constitutional thought of these two writers is examined with constant reference to the historical events of the time, a method which produces vividness in detail but prevents clarity in major respects. On the whole, this study gives evidence of a respectable amount of historical scholarship, although there are some errors, omissions, and misstatements. The checking of translated citations is difficult because adequate references to the works of the authors are lacking. It is a pleasing feature of this work that it preserves a sufficient detachment from the subject-matter not to be carried away by the personal achievements of Hotman and Bodin into an uncritical praise. The following statement is characteristic of the author's good critical judgment: "I had selected these two [Hotman and Bodin] as antitheses; one as a Hugenot defending self-government, the other as a Romanist defending absolutism. But as the work progressed it seemed that the contrast was less clear cut" (p. 106). They were both, in the mature opinion of the author, proponents of limited monarchy. In accordance with this view, she puts forward distinctly the aspects of Bodin which show that he was quite wavering in his absolutism, yet she states clearly the ultimately absolutist implications of his thought. However, some of her other conclusions will hardly be accepted, as for example the statement: "The mind of Hotman was incomparably clearer and more logical than the mind of Rousseau" (p. 194). The use of concepts is not as careful as one might expect from a study in the history of ideas. Basic distinctions are lost when words like government and state are used indiscriminately and interchangeably. Although on the whole the translation of the Latin texts is well done, there are instances where the connection between text fragment and translation is not apparent. The book has an adequate selective bibliography and a table of contents.—C. J. F.

Martinus Nyhoff has published a *Kritische Darstellung der Staatslehre* (Haag, pp. xii, 337) by the venerable Mr. H. Krabbe. The book, written in German, undertakes to evaluate critically the content of the

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doctrine of the state (*Staatslehre*) from the point of view of Krabbe's own doctrine of the sovereignty of law. The amount of space devoted to the various thinkers is to a considerable extent determined by this approach to the subject-matter. No pretense is made of presenting new material concerning any of the thinkers who are taken up. The chapters deal consecutively with "Ideas of the State in Greek Antiquity," "Medieval Doctrine of the State," "The Doctrine of the State after the Renaissance" [Machiavelli, Bodin, Monarchomachs, Althusius], "The Influence of Natural Law upon the Doctrine of the State" [Grotius, Hobbes, Spinoza, Thomasius, Wolff], "Theocracy and Popular Sovereignty in the Seventeenth and Eighteenth Centuries" [Bossuet, Fenelon, Milton, Rousseau], "The Doctrine of the Separation of Powers," "The Constitutional System," "The Historical School," "The Theocratic School," "The Purpose of the State," and finally "Society and the State." The author ends with a note upon the socialistic trend of our day, emphasizing the necessity of a corresponding responsibility and sense of duty. "The position which the state occupies with reference to production and distribution of goods contains without doubt a socialistic or communistic element." But "the rapidity of progress depends upon the extent to which a sense of duty permeates all layers of society . . ." The community has begun to extend its sphere of vital activity by entering into the realm of production. But this expansion must go together with a certain maturity of society in the fulfillment of duty. The community itself can further this process by its legal order but little; the driving forces, whether economic, religious, intellectual, or biological, generate in society itself.—C. J. F.

Deportation of Aliens (Columbia University Press, pp. 524), by Jane Perry Clark, is a timely study devoted largely to the interpretation of the deportation law and its administration. While there is considerable literature dealing with the political, constitutional and other aspects of deportation, this material is a welcome contribution to a field which has received rather scanty attention in recent years. After a brief sketch of the development of the deportation law from colonial beginnings to the present, the author proceeds to interpret the exclusion law by an analysis of judicial decisions and administrative findings. Included in this discussion are the legislative provisions relating to prospective and actual public charges, criminals involved in moral turpitude, anarchists, prostitutes, "other undesirables," and illegal entries.

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Following a chapter on administrative standards and methods, there is an exposition of the legal steps in the deportation process from the initial stage of issuing the preliminary statements that often precede the warrant of arrest until the warrant of deportation is executed. Miss Clark concludes that "the present procedure for the deportation of aliens is a hybrid mixture of statutory rule, delegated administrative regulation, and administrative interpretation of statutory construction" (p. 323). Legislative proposals to establish a five-year standard of limitation for deportation from the United States, to codify the deportation law, to prevent the deportation of children alone and unaccompanied, are among the changes suggested. As remedial measures against possible abuses of executive power, the writer favors proposals commonly advanced, such as the improvement in the quality and number of the personnel of the service and the strengthening of the powers of the board of review. The treatise contains a representative group of actual cases that have come before the deportation agencies. While these cases are of some assistance in clarifying the law, their value as guides to the law is greatly impaired by the failure of executive officers to give adequate statement of the reasons for their findings. The book is expository rather than critical in character. It is well written, and it is an excellent presentation of an important subject.—N. A.

The University of Chicago Press has published the lectures given in 1929 on the Harris Foundation by C. Gini, S. Nasu, R. R. Kuczynski, and O. E. Baker under the title of *Population* (pp. x, 312). Although these lectures by four international authorities are on a subject primarily of interest to the economist and sociologist, they nevertheless contain much material which bears on the problems—particularly in the field of international relations—of the political scientist. Gini here summarizes in English his theory of the cyclical rise and fall of populations, a theory in the support of which he has "for the past twenty years and more . . . tried to collect facts and arguments." He attacks the basic Malthusian hypothesis that the reproductive powers of populations remain constant throughout their generations, and contends that typically the *potestas generandi* of a nation waxes and later wanes. A "new" or "revived" nation is declared to be the rarely fortunate consequence of cross-breeding—due to immigration, conquest, or some other factor—a process more frequently unhappy in its results. Such a

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race is marked by unusual physical and mental vigor, resulting in, among other things, a high birth-rate. There follows a period of national evolution which is marked by the ultimate progressive decline—chiefly, Gini believes, due to biological weakening—of the birth-rate. This phenomenon first appears among the more successful, and therefore more exhausted, classes. The tendency is not only basically due to Neo-Malthusian practices, but is incapable of being checked by the prescriptions of the eugenist. The end, unless a lucky cross-breeding brings a rebirth, must be national death, either violent or natural. Unfortunately the former is more likely, since a moribund people usually attempts to prevent the peaceful taking over of its assets by a rising folk and the latter impatiently help themselves. Gini believes that the populations of western, northern, and central Europe, as well, probably, as those of the United States, are generally on the decline. The southern and eastern Europeans, on the other hand, are still increasing in numbers, though these nations are probably more mature than many outside of Europe. Gini refrains from prognosticating the outcome of this situation, though he does patriotically express the "hope—and more than the hope, the intimate feeling which many have —that the Italian nation is now renewing itself to write new and glorious pages in its history." Nasu, who is professor in the Imperial University of Tokyo, writes on "Population and the Food Supply," and in this connection offers an ingenious argument for the removal of barriers to international migration. His most cogent points are that overpopulation is relative to the standard of living, the raising of which is in general precedent to a slowing-down of population increase; and that international coöperation, rather than nationalistic exclusion, is required for the lifting of living standards in countries where numbers are still rapidly rising. Baker's discussion of "The Trend of Agricultural Production in North America and its Relation to Europe and Asia" is in reality an admirable account of the recent agricultural history of the United States. As such, it merits careful reading. Kuczynski's brief contribution is an estimate of "The World's Future Population."—K. W. B. and N. C.

The University of North Carolina Press has published a study entitled *Illiteracy in the United States,* by Sanford Winston (pp. xii, 168). The general problem is dealt with in Part I, consisting of nine chapters. By a thorough analysis of census statistics, the author demon-

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strates not only our decreasing illiteracy rate, but also the correlation between illiteracy and sex, age, urban and rural environments, race and nationality, and school systems. The eighth chapter is devoted to the adjustment of census illiteracy rates for the respective states by "the method of standard population." The last eight chapters (Part II) treat of illiteracy in relation to certain social phenomena. Illiteracy rates, high birth rates, and high infant mortality rates go together. There is a positive relationship between illiteracy and early marriage. Illiteracy in its relationship to size of family, mobility, suicide, urbanization, *et al.*, is shown by painstaking correlations. As in Part I, there is an excellent chapter in summary. The book contains two appendices and a bibliography. The first appendix explains the methodology employed by the author in his analysis; the second contains supplementary tables. This is a timely book in view of the national campaign to eradicate illiteracy. The most comprehensive analysis yet made of illiteracy statistics in the United States lies between its covers. To the political scientist primarily interested in the sociological aspect of his field, this book will be of value.—A. W. B.

The University of Chicago Press has published a second edition of Charles E. Merriam's *New Aspects of Politics* (pp. xxxiii, 253). The body of the book remains the same as in the first impression, but the author has written a new preface of fifteen pages which contains an essay on tendencies in political science during the last five years. "Summing up the tendencies evident during the last few years," writes Professor Merriam, "we find an impressive development of interest and activity in social science, a freer interpenetration of the several branches of social research, a tendency toward bridging the gap between social science and the biological and medical sciences and toward building an integrated study of human behavior, increasing attention to the material and method of political science and to the mechanisms for the prosecution of research. Still more specific trends are those in the direction of quantification, toward study of the physical and psychiatric aspects of political personality and behavior, toward more realistic study of such devices as propaganda, the ways of pressure groups, the new forms of industrio-political organization, the inevitable and symptomatic protest against over-mechanization and methodological emphasis, and finally the faint signs of a revival of interest in the logic and philosophy of politics. On the practical side,

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there has been evident a powerful trend toward more effective organization and exchange of the information and experience of governing officials and research groups generally."

Although *A New Exposition of Money, Credit and Prices,* by J. Lawrence Laughlin (University of Chicago Press, two volumes, pp. xxiv, 521; xv, 766), is primarily a study in economics, there are a number of chapters on subjects which are closely allied to certain fields of government, especially political movements, legislation, and administration. In the chapters on "Gold and Silver in the United States" (Vol. I, chapter ix) and "Government Issues in the United States" (Vol. II, chapter x), the reader will find an interesting account of the influence of monetary problems on American politics and legislation. The chapters on "The Development of Credit in the Two Banks of the United States" (Vol. II, chapter viii), "State Banks in the United States" (Vol. II, chapter ix), and especially those on "The National Banking System" (Vol. II, chapter xii) and "The Federal Reserve System" (Vol. II, chapter xv) make clear the interplay of politics, economics, and administration, and contain a wealth of illustrative material. The book as a whole is very timely in view of the present financial depression, and the chapters on British currency are of particular interest because of the recent departure from the gold standard.

The third edition of Walter Jellinek's *Verwaltungsrecht* (*Enzyklopädie der Rechts-und Staatswissenschaft,* Vol. XXV; Berlin, 1931, pp. 571; 1st ed., 1927) has, in addition to some minor alterations, brought this comprehensive treatise on modern German administrative law up to date, e.g., with respect to the latest developments in Prussian police law. The *Verwaltungsrecht* which, after the "classical" works of O. Mayer and F. Fleiner, and the modern theoretical study of A. Merkl (*Allgemeines Verwaltungsrecht,* Wien und Berlin, 1927), has deservedly come to occupy the most conspicuous place in the German literature on the subject should be recognized as an invaluable reference work by American students of Continental government. In addition to the admirably digested wealth of practical material (covering the whole range of statutes, case law, and related literature), all the pertinent phases of legal theory are dealt with critically. The author's own attitude is largely based on O. Mayer, as in his definition of the function of "administration;" although his former distinguished theoretical studies (in particular his *Gesetz, Gesetzesanwendung und*

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Zweckmässigkeitserwägung, 1913) have prevented him from lapsing into a mere eclecticism.—W. H. K.

It is a far cry from evaporation of salts in an inland sea in Permian times to the latest style in semi-socialism. But Professor G. W. Stocking, in *The Potash Industry* (Richard R. Smith, Inc., pp. 339), makes that cry, with extra yelps at German mercantilism and corporate structure for good measure. He traces, in detail but clearly, the German potash syndicate through successive stages of semi-official state control from 1879 to 1910, a compulsory syndicate from 1910 to 1921, and a "Socialist" organization which paradoxically left room for "The Triumph of Business Enterprise." Those Americans who want a government quota in our petroleum industry will be richly repaid if they read about the potash quotas before they draft their statutes. The poorly drawn pre-war potash laws encouraged sinking shafts to obtain quotas though the shafts were uneconomic. Since the war, social control by the Potash Council, representing employers, workers, consumers, and the state, has been valuable in closing inefficient mines, but of more use in raising than lowering prices. Despite these discouraging sides of the German syndicate, Mr. Stocking concludes with a hope that proper syndicate control may help an infant American potash industry to compete with sexegenarian German and Alsatian sisters. He does not advise the exact form of syndicate, but his earlier chapters show several forms which it would be wise for us to avoid.—G. C. S. B.

Origins of the Early English Maritime and Commercial Law, by Frederic Rockwell Sanborn (The Century Co., pp. xxii, 424), is a publication of the American Historical Association, and is the first history in English of early maritime law. The author traces the continuity of development from the Roman days to the beginning of the sixteenth century. i.e., the close of the mediaeval period. He shows the legal tradition passing from the later Roman Empire to the western maritime cities, and in turn to the rest of western Europe. It is clear that the tradition had to be modified and adapted to the new conditions and new needs of society from the eleventh century on. However, the story of this change and adaptation in this study is not so much a history as an historiography, to use Croce's distinction. There is a close interconnection during this period between maritime and commercial law, but the reviewer doubts the wisdom of tracing the development of each separately in parallel pairs of chapters, as in this study. On the whole,

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the work is remarkable for its skillful analysis and the good handling of materials. The author is a student of both Continental and English authorities. This, together with his affectionate interest in the subject, went into making this work a scholarly achievement of no mean order. —S. P. L.

The Problem of Unemployment, by Paul Douglas and Aaron Director (The Macmillan Co., pp. 500), reviews economic aspects of unemployment and the business cycle ranging from Fisher's stabilization of prices and Federal Reserve Board credit policy to the closer-to-title matters of cyclical, seasonal, and technological unemployment. An interesting, though admittedly fallible, statistical analysis of unemployment costs outlines in deep black lines the monstrous shape of the problem. Pure theory then lightens the gloom by leading to the conclusion that permanent technological unemployment is impossible. Political scientists will be especially interested in the latter half of the book, which discusses placement of labor and unemployment insurance in several countries, especially England and Germany. Public employment exchanges and state-compelled, but not state-administered, unemployment insurance emerge triumphant from the crucible of discussion. For knowledge of detailed administrative difficulties like the immobility of working population and part-time workers in England, the reader must supplement the book with current articles of a less purely economic viewpoint than the sources consulted by the authors. Nevertheless, if you want to lecture to the Rotarians or to your students, or even chat with your friends, on any aspect of unemployment, a little digging in this valuable compendium will give you a sound talking basis.—G. C. S. B.

With his usual ease of expression, irony, and keenness of observation, Brand Whitlock has set forth his views on the Eighteenth Amendment and national prohibition in a small book entitled *The Little Green Shutter* (Appleton, pp. 157). As in his *Forty Years of It,* the author stresses the fact that no statute can really become a law or be enforced unless it has public opinion behind it, and lays emphasis on the futility of attempting to improve morals by legislation. In his opinion, drinking has increased rather than decreased, with the federal prohibition act taking the place of "the green shutter" of the old saloon as a means of shielding from public view the individual who wishes to quench his thirst rather than deterring him.

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Labor Fact Book (International Publishers, pp. 216) gives a chance to view Communist public opinion at its birth. Selection of material is evident in treatment of imperialism, profits, "speed up," negro workers, injunctions, etc., and ignoring of philanthropy, education, and standards of living. By the marvelous associative powers of Communist propagandists, most of American industry is linked to the House of Morgan. Government officials are damned by reference to some reprehensible action of a corporation with which they were once connected. These techniques of opinion control sting the more sharply because there is much truth in the book.—G. C. S. B.

The Cotton Trade and Industrial Lancashire, 1600-1780, by Alfred P. Wadsworth and Julia De Lacy Mann (Manchester University Press, pp. 539), is a volume which deals in detail with one of the great English industries on the eve of the Industrial Revolution. It describes the emergence of cotton as a rural industry in Lancashire during the sixteenth and seventeenth centuries, with some account of the parallel growth of the woolen trade during the same years. Then the book proceeds to outline the place of cotton goods in European commerce during the eighteenth century and sketches the development of the trade in England from 1700 to the incoming of the machine age. Various chapters describe the forms of capitalist organization into which the cotton industry was cast and deal with different aspects of working-class life in the pre-factory period. Toward the close of the volume, there is a good discussion of the earlier mechanical inventions in spinning and weaving.

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RECENT PUBLICATIONS OF POLITICAL INTEREST

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University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

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